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Maisenbacker v. Society Concordia, recently decided by the Supreme Court of Errors of Connecticut, involves not only a novel question of ball room rights, but also a very important proposition of law, governing the liability of the principal for punitive damages arising out of the tort of its agent. It appeared in that case that plaintiff having contracted with and paid the defendant for the privilege of dancing at a certain ball was, by the forcible act of defendant's agents prevented from exercising her said right, and was thereby caused pain and damage. The court in substance held that mental as well as physical suffering, where properly alleged, may be proved as an element of actual damage, and as naturally and directly resulting from an assault on the floor of a public ballroom; that private corporations, as well as individuals, may, for their own acts, become liable in punitive damages; that the expenses of litigation are not an element of actual or compensatory damages, but may be considered where exemplary damages are awarded; that expenses of litigation, recoverable as damages in cases where punitive damages are recoverable, are limited to the excess over taxable costs; that a corporation is not liable in punitive damages for an assault by a floor manager appointed to regulate the dancing at a ball given by it, committed by putting his hand on the plaintiff's shoulder "rudely, insolently, or angrily," and while she was on the ballroom floor, "at the same time telling her she could not dance there, and that she was not a fit person to be there," and that a principal, though liable to compensate for injuries done by his agent within the scope of his employment, is not liable for exemplary damages because of wanton, oppressive, or malicious intent on the agent's part, where the acts were not authorized or ratified by the principal. The last proposition, probably the most important one in the case, is supported by the weight of authority. In Cleghorn v. Railroad Co., 56 N. Y. 44, Chief Justice Church, in delivering the opinion of the court, says: "For injuries by the negligence of a servant while engaged in the business of the master within the scope of his employment, the latter is liable for compensatory damages; but for such negligence, however gross or culpable, he is not liable to be punished in punitive damages, unless he is also chargeable with gross misconduct." In the case of Railway Co. v. Prentice, 147 U. S. 101, 13 Sup. Ct. Rep. 261, in which this question is very fully discussed, and the decisions in both the federal and State courts upon this subject reviewed, Mr. Justice Gray, speaking for the court, laid down the rule, as deducible from the authorities, that "guilty intention upon the part of the defendant is required in order to charge him with exemplary or punitive damages." "Exemplary or punitive damages," said he, "being awarded, not by way of compensation, but by way of punishment of the offender, and as a warning to others, can only be awarded against one who has participated in the offense. A principal, therefore, though, of course, liable to make compensation for injuries done by his agent within the scope of his employment, cannot be held liable for exemplary or punitive damages merely by reason of wanton, oppressive, or malicious intent upon the part of the agent." In 1 Sedg. Dam. (8th Ed.) §§ 378, 380, the author, after citing very fully the conflicting authorities in different jurisdictions upon the question, says: "It is the better opinion that no exemplary damages can be had against a principal for the tort of an agent or servant, unless the defendant expressly authorized the act as it was performed, or approved it, or was grossly negligent in hiring the agent or servant."

The constitutionality and effect of what is known as the "indeterminate sentence law" of Massachusetts was considered by the Supreme Court of that State in Murphy v. Commonwealth, 52 N. E. Rep. 505. The court held that a former statute of that State, enacted before the passage of the indeterminate sentence law, authorizing certain deductions to be made for good conduct from the sentences of convicts, and their release during the time so deducted, on certificate of the prison commissioners, is not a mere measure of prison discipline, but entitles convicts to such deduction and release as of right, which, subsequent to the commission of the offense, cannot be interfered with to their disad-

vantage by legislation; that the "indeterminate sentence" statute of 1895, providing that in sentencing convicts the court shall fix a minimum and a maximum term for the offense, and at any time after expiration of the minimum period the convict may be released on permit from the commissioners of prisons, approved by the governor and council, which permit may at any time be revoked, is not void as rendering the duration of the sentence uncertain, and that that act is not void as an *ex post facto* law, as empowering the prison commissioners and the governor and council to fix the sentence, since a sentence thereunder is, in effect, one for the maximum period. The earlier act provides for the release of a convict during a period deducted from his sentence for good behavior on certificate of the prison commissioners. The Act of 1895 provides for an indeterminate sentence and a release after expiration of the minimum period, on certificate of the prison commissioners, approved by the governor and council. It was held that the latter act is not, by requiring additional authorities to concur in the issuance of the certificate of release, void as an *ex post facto* law, as applied to offenses committed before it went into effect. The earlier act also provides for deductions for good behavior from the sentences of convicts, and for their release for the time so deducted. The Act of 1895, without repealing the former act, provides for indeterminate sentences, and a release of the convict after expiration of the minimum period. It was held by the court that the latter act does not, by implication, repeal the former, and hence it applies only to sentences for offenses committed after it took effect.

NOTES OF IMPORTANT DECISIONS.

DAMAGES — PERSONAL INJURY TO CHILD—IMPAIRMENT OF PROSPECTS OF MARRIAGE. — In Smith v. Pittsburgh & W. Ry., 90 Fed. Rep. 788, decided by the United States Circuit Court, N. D. Ohio, it was held that where a personal injury to a little girl is such as to seriously impair her prospects of marriage when she reaches a marriageable age, such fact may properly be considered by the jury as an element of damages resulting from the injury. It was further held that while the loss of a particular prospect of marriage by a woman must be specially pleaded to entitle it to be considered as an element of damages, the loss of a general prospect of marriage, in the case of a child, by reason of an injury which disfigures her, is a natural, and not a special, consequence of the injury, and may be, and in fact can only be, taken into consideration as an element of general damages, and a special allegation with regard to it is not required. The court said in part: "In Grotenkemper v. Harris, 25 Ohio St. 510, 514, the Supreme Court of Ohio, approving the doctrine of Railroad Co. v. Barron, 5 Wall. 90, and applying it to the case of the death of a child by the wrongful act of the defendant, in a suit by its next of kin, under the statute of Ohio, uses this language: 'The deceased at the time of his death was a mere infant, and it could not properly be said that his life was of any present pecuniary value to any one; and the only basis upon which damages for pecuniary injury to his next of kin, by reason of his death, could be predicated and allowed, was the one given by the court. If death has not ensued from the injury complained of, there can be no doubt that the party injured, although an infant, could, by his next friend, have maintained an action against the wrongdoers, and have recovered damages commensurate with the injury sustained.'

"Turning to the action of the trial court, we find that what was thus approved in that case was an 'allowance of damages other than such as would immediately and directly follow from the wrongful act of the defendant,' and might include, though more difficult of application in case of a mere child, such pecuniary benefits as the next of kin 'would probably have derived from him in the future.' And the jury had been told, in substance, that they must take all the facts and circumstances into consideration, and assess such damages as the next of kin had suffered in view of the future prospects, as they appeared from the then existing circumstances and the ordinary development of such a child. There is not a statute governing this case, but the rules of the common law for measuring the damages were substantially the same where there was no death and the injured party is suing in his own behalf, and the Supreme Court of Ohio recognizes this in the case cited. And, on this rule, I am unable to see why a girl five years old may not ask the jury to consider what effect the injury of disfigurement will probably have on the prospects of her marriage when she reaches the age of womanhood, and how far the money value of her whole life may be blasted by that circumstance. It is not speculative because it is difficult to estimate, nor in any other sense than almost every element of damages is speculative where the ascertainment depends on what the jury, or other trior of the fact, 'shall deem fair and just,' and where, being 'uncertain and indefinite,' the damages are not capable of adjustment 'with precision and accuracy,' as was stated in the Ohio case. The estimate must be entire,

once for all, and, hence, we cannot wait to see how the unknown adversities or contingencies of the future may affect the question; as if, by some other calamity, those prospects, which we presently estimate, should turn out to have had no existence at all; as if the girl should die before she reaches womanhood; or, having reached it, should find a profitable marriage notwithstanding the disfigurement.

"In the case of Ernestine Koch, injured on shipboard, a servant girl, who, among other injuries, received a wound in the forehead, from which a permanent scar resulted that 'somewhat disfigured' her, Judge Deady allowed, as one item, $500 for the scar, concerning which he uses this language: 'It may be that the sum of $500 is an insufficient compensation for such a blemish upon the personal appearance of the libelant. But it does not appear that the scar will affect her personal appearance so as to make her presence offensive or painful to others.' etc. And then he says this: 'Still, the scar will be a permanent disfigurement of her person, for which she is entitled to some compensation. Karr v. Parks, 44 Cal. 49. In this country, at least, it is still open to every woman, however poor or humble, to obtain a secure and independent position in the community by marriage. In that matter, which is said to be the chief end of her existence, personal appearance—comeliness—is a consideration of comparative importance in the case of every daughter of Eve.' The Oriflamme, 3 Sawy. 397; Fed. Rep. Cas. No. 10, 572; 3 Suth. Dam. 268, 1 Suth. Dam. 765.

"There are other familiar instances where loss of marriage prospects are elements of damage, as in seduction, breach of promise (for the particular loss by that breach of contract), slander or libel (under some circumstances), and sometimes of false representations amounting to a distinct and actionable injury. Cooley, Torts, 277; 3 Suth. Dam. 323. An injury to the person of a woman affecting her prospects of marriage should be as actionable as one to her character.

"The petition in this case does not specially plead any loss of marriage prospects, but in a case like this it is difficult to see why there should be any special plea. It is said by Mr. Sutherland that special damages are required to be stated in the declaration, and that an unmarried woman cannot secure damages on account of her prospects of marriage being lessened by the personal injury for which she sues, unless such special damage be alleged; for which he cites: Hunter v. Stewart, 47 Me. 419; 1 Suth. Dam. 763, 765; 3 Suth. Dam. 268, and note. Not having an opportunity of examining that case to see the age of the woman, its bearing is not fully understood. But presumably it was a woman, and not a child of five years of age, as to which it could hardly be said that she could truthfully set up any special plea or averment as to a loss of marriage; and, therefore, presumably the case, and all like it, would fall within the general rule of pleading that damages not following directly as a consequence of the particular circumstances must be specially pleaded. The loss of a particular prospect of marriage must be specially pleaded, no doubt, but why should the loss of the general prospect belonging to a child whose injury so disfigures her as to make marriage almost impossible? It would seem rather to fall within the rule of the Ohio case above cited, as applicable to a girl's prospects in the future, although a mere infant now; and, generally, within the doctrine that such a loss is a natural consequence of the injury, and not a special consequence, very much like the loss to growing crops, which may be compensated in damages. Suth. Dam. 158, 187, 193-198.

"It would be agreed by all that the injury to this plaintiff does seriously impair her prospects of marriage when she reaches the marriageable age, and I had no hesitation in holding that such impairment is an element of damage for the consideration of the jury. It is not more likely to unduly influence a jury, nor is it more difficult of estimation than any other element of damages confessedly within their consideration when a mere child is injured, nor at all unlike most of the elements of calculation or estimation in all cases of personal injury. It all depends on the fair judgment of the jury, and is especially subject to the scrutiny of the court and its power to control excessive verdicts, as was said by Cresswell, J., in Smith v. Woodfind, 1 C. B. (N. S.), 660, in a somewhat analogous estimation of damages without the aid of a precise rule. 3 Suth. Dam. 323, and note; *Id.* 289; 1 Suth. Dam. 810."

SUBROGATION — SURETIES ON OFFICIAL BOND. —In Myers v. Miller, 31 S. E. Rep. 976, decided by the Supreme Court of Appeals of West Virginia, it was held that sureties on the official bond of a sheriff, upon being compelled to make good the default of their principal, will, by the fact of payment, become equitable assignees, and be subrogated to the position of the State in respect of all its securities, liens, and priorities, for the purpose of enforcing reimbursement from their principal. The court said in part: "If sureties know that they can be subrogated to the priority of the State, less apprehension will be felt in joining in the bonds of collectors, and less delay in payment by solvent sureties. Other creditors are not injured, for, if the State has the first claim upon the fund, it does them no wrong, whether this claim is enforced by the State or by those standing in its stead. In Enders v. Brune, 4 Rand. 445, the court, in treating the subject of subrogation, says: 'In enforcing these principles, courts of equity look not to the form but to the essence of the transaction. They consider the doctrine of substitution, not as one founded in contract, but the offspring of natural justice; nor do they leave it to the creditor to cede his actions, but, so soon as a third person who has become bound with the debtor pays his debt to the cred-

itor, they substitute him to the creditor, giving him every right, every lien, every security, to which the creditor could resort, and, if the creditor should with bad faith release any of those securities, it would be a bar *pro tanto* to his recovery against the surety.' McNeil v. Miller, 29 W. Va. 480, 2 S. E. Rep. 335 (Syl. point 1): 'The doctrine of subrogation, being the creation of courts of equity, is so administered as to secure essential justice, without regard to form, and is independent of any contractual relation between the parties to be affected by it.' 3 Pom. Eq. Jur. sec. 1419: 'The surety who has paid or satisfied the principal's debt or obligation is entitled to be subrogated to, and to have the benefit of, all securities which may at any time have been put into the creditor's hands by the principal debtor, or which the creditor may have obtained by the principal debtor. By the fact of payment the surety becomes an equitable assignee of all such securities, and is entitled to have them assigned and delivered up to him by the creditor, in order that he may enforce them for his own reimbursement and exoneration;' and note 1 to same section and cases there cited. On the subject of sureties on official government bonds, 24 Am. & Eng. Enc. Law p. 220: 'Sureties on bonds for government officials, upon being compelled to make good the default of their principal, will be subrogated to the position of the government, in respect of all its securities, liens and priorities, for the purpose of enforcing reimbursement from their principal or contribution from their co-sureties. And it is immaterial how the government's right of priority originated, whether out of common-law prerogative, positive statute or contract; once established that it is entitled to rank as a preferred creditor, the same preference will be upheld, by way of subrogation, for the benefit of the surety.' Hawker v. Moore, 40 W. Va. 49, 20 S. E. Rep. 848; Boltz's Estate, 133 Pa. St. 77, 19 Atl. Rep. 303; Turner v. Teague, 73 Ala. 554; Livingston v. Anderson, 80 Ga. 175, 5 S. E. Rep. 48; Irby v. Livingston, 81 Ga. 281, 6 S. E. Rep. 591; Hunter v. United States, 5 Pet. 173; Roberston v. Trigg's Admr. 32 Gratt. 76; Crawford v. Richeson, 101 Ill. 351; Hook v. Same, 115 Ill. 431, 5 N. E. Rep. 98; 1 Jones, Liens, secs. 99, 100. It is contended that the auditor had no authority to assign the judgment of the State to plaintiffs. It is immaterial whether an assignment is made or not, as it will be seen from the authorities above cited that the doctrine is well established, by almost an unbroken line of decisions, that 'a surety who has paid the debt of his principal obligor is subrogated in equity, by the act of payment, not only to the securities of the creditor, but to all his rights of priority;' and 'what difference can logically result whether the creditor to whom the sureties made payment is the State or an individual?' Orem v. Wrightson, 51 Md. 34. The statement of the auditor, purporting to be an assignment, supplies the evidence of payment of the judgment to the State by the sureties. It is argued that because one of the plaintiffs made his note, and the others became indorsers, in order to raise the money to pay the State the amount of the judgment, as disclosed by the evidence, therefore, the maker of the note is the only one who paid anything on the judgment, and the others cannot be entitled to the release, because they have not suffered. The sureties had a right, among themselves, to devise ways and means to get the money, and, as between themselves, they may each and all be equally liable for the amount of the note so made and indorsed. They got the money and paid the debt, and are entitled to all the rights, remedies and priorities of the State in respect to said judgment. And how is the complaining lienholder in any worse condition than he would be if the sureties had not paid the judgment, and the State were now pressing its collection instead of the plaintiffs?'"

TORT — DAMAGES TO WIFE BY HUSBAND — CAUSE OF ACTION.—In Deeds v. Strode, 55 Pac. Rep. 656, decided by the Supreme Court of Idaho, it appeared that plaintiff, a married woman, having a husband from whom she had never been lawfully divorced, married defendant. The latter marriage having been declared null and void, plaintiff brings action to recover damages from defendant for injuries alleged to have been received by her from defendant while they were cohabiting together, by reason of the defendant's having inoculated her with a veneral disease. It was held that, it not appearing that defendant had induced plaintiff to enter into marital relations with him by any fraud, deceit, or misrepresentation, no recovery could be had. The following is from the opinion of the court: "It does not appear that the defendant in any way misled the plaintiff, that he made any false representations to her, or practiced any fraud upon her, to induce her to enter into the marriage relation with him. If there was fraud or deceit practiced in bringing about the relation, it was presumably, under the statements in her complaint, attributable to the plaintiff. She was the incapacitated party. It was by her procuration—upon her motion—that the pretended divorce from Deeds, her former husband, had been procured. She was in a position to know and is presumed to know, whether that divorce was legal or not; whereas the defendant cannot be presumed to have any knowledge or information upon the subject. There is no allegation in the complaint that defendant knew of the existence of the divorce in Deeds against Deeds. The plaintiff, holding herself out as one capacitated and qualified to enter into the marriage relation, accepted the proposals of the defendant to, and did, enter into such relations with him. Her act was at least a fraud upon the defendant. Plaintiff claims that by, through, and in consequence of, said relations she has been damaged, and asks the court to award her compensation for such damage. We know of no principle of law or equity which will support this contention.

Appellants' counsel cite Nels. Div. & Sep. § 1023. The language there used is as follows: 'The woman is relieved of her incapacity to sue and be sued. She may sue the man who has entrapped her into a void marriage, and compel him to account for rents and profits of property he took under such marriage. Where a woman is induced by fraud and deceit to enter into a void marriage, she may recover damages for such tort without first having the marriage annulled.' This may be accepted as a correct statement of the law; but how is it made applicable to the case made by the record under consideration? The plaintiff has undoubtedly the right to sue and be sued, but to avail herself of that right she must, like every other person, have a cause of action. There is no question of property rights involved in this case. It is not claimed that the plaintiff brought to the community any estate or property whatever, or that the defendant derived any pecuniary benefit from said relation. The complaint alleges that the defendant is the owner and possessed of property of the value of $150,000. It is not claimed or pretended that the plaintiff was induced by fraud and deceit to enter into a void marriage.' The case of McDonald v. Fleming, 12 B. Mon. 285, cited in note to section 1023 of Nelson on Divorce and Separation, was one in which the parties, after having cohabited together as husband and wife for several years, separated, and the woman brought action to recover for her services during the time of such cohabitation, and also for money advanced by her to the defendant for the purchase of certain real estate. The court held that, while she could not recover for services, she might for the money advanced, and so decreed. The parties in that case were *in pari delicto*. While this decision supports the text in Nelson, it has no application to the facts in the case at bar. Blossom v. Barrett, 37 N. Y. 434, cited by appellants in their brief, was an action 'brought by the plaintiff to recover damages of the defendant for fraudulently inducing the plaintiff to marry the defendant, and to cohabit with him, he having another wife living, from whom he was not lawfully divorced, and the defendant being at the time incapacitated to marry any one while his prior wife was living.' The plaintiff's right to recover in that case was based upon the fraud of the defendant. It could not be considered an authority in support of the contention of the plaintiff in this case. In Robbins v. Potter, 98 Mass. 532, cited by appellants, the plaintiff sued to recover money advanced to defendant by her while they were living together as husband and wife under a marriage which both parties knew to be void. The court in that case held, in substance, that while the plaintiff would not be allowed to recover for services rendered to defendant during the existence of the illegal relation between them, still she could recover for money loaned defendant during that period, and which he had expressly contracted to pay. Cooper v. Cooper, 147 Mass. 370, 17 N. E. Rep. 892, cited by appellants, was an action for services, —held no recovery could be had. The case of Higgins v. Breen, 9 Mo. 497, is not in point,—another case of fraud by defendant. We have examined carefully all of the cases cited by counsel, and have found not one which supports, even by implication, the contention of appellants. Cooley, Torts, p. 279, has, under the head of 'Fraudulent Marriage,' the following: 'A serious wrong may be accomplished by inducing any one, through misrepresentation and fraud, to enter into an illegal marriage. * * * The tort in such a case consists in the fraud accomplished, to the woman's serious, and perhaps permanent, injury.' Counsel for appellants insist that, the injury of which plaintiff complains having been the result of the wrongful act of defendant, plaintiff should be entitled to recover therefor, the same as though defendant had assaulted or poisoned her. We do not recognize the parallel contended for. The injury complained of in this case could scarcely have arisen but for the illegal relations existing between the parties, and such relations were entered into voluntarily by plaintiff, and were not induced by any fraud or misrepresentation on the part of the defendant; and the plaintiff's incapacity to enter into marriage relations constituted the illegality. The injury was consequent upon her own illegal act, and we know of no principle of law authorizing recovery for injuries in such a case."

ADVERSE POSSESSION — INTERRUPTION — TAX SALE.— In Harrison v. Dolan, 52 N. E. Rep. 513, decided by the Supreme Judicial Court of Massachusetts, it was held that where a tenant has continued in adverse possession of land for over twenty years, the fact that during his occupancy there was a sale and conveyance of the premises for taxes does not constitute an interruption of his possession. The court said in part: "Adverse possession is pure matter of fact, to be interrupted only by interrupting the possessor's exclusion of adverse claimants, abandonment of his claim, or a change in his intent. Whether the last two would have any effect unless they were manifested, we need not consider. In general, also, the effect of the adverse possession will not be abridged by a change of title. The adverse possessor *ex hipothesi* is a wrongdoer until the twenty years has elapsed. Commonly, at least, if not necessarily, his claim is adverse to all the world; and probably any dealings among the excluded parties, even when a deed by a disseisee is valid, would not affect him. Probably the purchaser would only stand in his seller's shoes. See Chapin v. Freeland, 142 Mass. 383, 387, 8 N. E. Rep. 128. At all events, the action of the original disseisee would be barred.

"When it is held that the disseisor's possession must be continuous in him and his predecessors in title during the whole time of limitation, and

itor, they substitute him to the creditor, giving him every right, every lien, every security, to which the creditor could resort, and, if the creditor should with bad faith release any of those securities, it would be a bar *pro tanto* to his recovery against the surety.' McNeil v. Miller, 29 W. Va. 480, 2 S. E. Rep. 335 (Syl. point 1): 'The doctrine of subrogation, being the creation of courts of equity, is so administered as to secure essential justice, without regard to form, and is independent of any contractual relation between the parties to be affected by it.' 3 Pom. Eq. Jur. sec. 1419: 'The surety who has paid or satisfied the principal's debt or obligation is entitled to be subrogated to, and to have the benefit of, all securities which may at any time have been put into the creditor's hands by the principal debtor, or which the creditor may have obtained by the principal debtor. By the fact of payment the surety becomes an equitable assignee of all such securities, and is entitled to have them assigned and delivered up to him by the creditor, in order that he may enforce them for his own reimbursement and exoneration;' and note 1 to same section and cases there cited. On the subject of sureties on official government bonds, 24 Am. & Eng. Enc. Law p. 220: 'Sureties on bonds for government officials, upon being compelled to make good the default of their principal, will be subrogated to the position of the government, in respect of all its securities, liens and priorities, for the purpose of enforcing reimbursement from their principal or contribution from their co-sureties. And it is immaterial how the government's right of priority originated, whether out of common-law prerogative, positive statute or contract; once established that it is entitled to rank as a preferred creditor, the same preference will be upheld, by way of subrogation, for the benefit of the surety.' Hawker v. Moore, 40 W. Va. 49, 20 S. E. Rep. 848; Boltz's Estate, 133 Pa. St. 77, 19 Atl. Rep. 303; Turner v. Teague, 73 Ala. 554; Livingston v. Anderson, 80 Ga. 175, 5 S. E. Rep. 48; Irby v. Livingston, 81 Ga. 281, 6 S. E. Rep. 591; Hunter v. United States, 5 Pet. 173; Roberston v. Trigg's Admr. 32 Gratt. 76; Crawford v. Richeson, 101 Ill. 351; Hook v. Same, 115 Ill. 431, 5 N. E. Rep. 98; 1 Jones, Liens, secs. 99, 100. It is contended that the auditor had no authority to assign the judgment of the State to plaintiffs. It is immaterial whether an assignment is made or not, as it will be seen from the authorities above cited that the doctrine is well established, by almost an unbroken line of decisions, that 'a surety who has paid the debt of his principal obligor is subrogated in equity, by the act of payment, not only to the securities of the creditor, but to all his rights of priority;' and 'what difference can logically result whether the creditor to whom the sureties made payment is the State or an individual?' Orem v. Wrightson, 51 Md. 34. The statement of the auditor, purporting to be an assignment, supplies the evidence of payment of the judgment to the State by the sureties. It is argued that because one of the plaintiffs made his note, and the others became indorsers, in order to raise the money to pay the State the amount of the judgment, as disclosed by the evidence, therefore, the maker of the note is the only one who paid anything on the judgment, and the others cannot be entitled to the release, because they have not suffered. The sureties had a right, among themselves, to devise ways and means to get the money, and, as between themselves, they may each and all be equally liable for the amount of the note so made and indorsed. They got the money and paid the debt, and are entitled to all the rights, remedies and priorities of the State in respect to said judgment. And how is the complaining lienholder in any worse condition than he would be if the sureties had not paid the judgment, and the State were now pressing its collection instead of the plaintiffs?"

TORT — DAMAGES TO WIFE BY HUSBAND — CAUSE OF ACTION.—In Deeds v. Strode, 55 Pac. Rep. 656, decided by the Supreme Court of Idaho, it appeared that plaintiff, a married woman, having a husband from whom she had never been lawfully divorced, married defendant. The latter marriage having been declared null and void, plaintiff brings action to recover damages from defendant for injuries alleged to have been received by her from defendant while they were cohabiting together, by reason of the defendant's having inoculated her with a veneral disease. It was held that, it not appearing that defendant had induced plaintiff to enter into marital relations with him by any fraud, deceit, or misrepresentation, no recovery could be had. The following is from the opinion of the court: "It does not appear that the defendant in any way misled the plaintiff, that he made any false representations to her, or practiced any fraud upon her, to induce her to enter into the marriage relation with him. If there was fraud or deceit practiced in bringing about the relation, it was presumably, under the statements in her complaint, attributable to the plaintiff. She was the incapacitated party. It was by her procuration—upon her motion—that the pretended divorce from Deeds, her former husband, had been procured. She was in a position to know and is presumed to know, whether that divorce was legal or not; whereas the defendant cannot be presumed to have any knowledge or information upon the subject. There is no allegation in the complaint that defendant knew of the existence of the divorce in Deeds against Deeds. The plaintiff, holding herself out as one capacitated and qualified to enter into the marriage relation, accepted the proposals of the defendant to, and did, enter into such relations with him. Her act was at least a fraud upon the defendant. Plaintiff claims that by, through, and in consequence of, said relations she has been damaged, and asks the court to award her compensation for such damage. We know of no principle of law or equity which will support this contention.

Appellants' counsel cite Nels. Div. & Sep. § 1023. The language there used is as follows: 'The woman is relieved of her incapacity to sue and be sued. She may sue the man who has entrapped her into a void marriage, and compel him to account for rents and profits of property he took under such marriage. Where a woman is induced by fraud and deceit to enter into a void marriage, she may recover damages for such tort without first having the marriage annulled.' This may be accepted as a correct statement of the law; but how is it made applicable to the case made by the record under consideration? The plaintiff has undoubtedly the right to sue and be sued, but to avail herself of that right she must, like every other person, have a cause of action. There is no question of property rights involved in this case. It is not claimed that the plaintiff brought to the community any estate or property whatever, or that the defendant derived any pecuniary benefit from said relation. The complaint alleges that the defendant is the owner and possessed of property of the value of $150,000. It is not claimed or pretended that the plaintiff was 'induced by fraud and deceit to enter into a void marriage.' The case of McDonald v. Fleming, 12 B. Mon. 285, cited in note to section 1023 of Nelson on Divorce and Separation, was one in which the parties, after having cohabited together as husband and wife for several years, separated, and the woman brought action to recover for her services during the time of such cohabitation, and also for money advanced by her to the defendant for the purchase of certain real estate. The court held that, while she could not recover for services, she might for the money advanced, and so decreed. The parties in that case were *in pari delicto*. While this decision supports the text in Nelson, it has no application to the facts in the case at bar. Blossom v. Barrett, 37 N. Y. 434, cited by appellants in their brief, was an action 'brought by the plaintiff to recover damages of the defendant for fraudulently inducing the plaintiff to marry the defendant, and to cohabit with him, he having another wife living, from whom he was not lawfully divorced, and the defendant being at the time incapacitated to marry any one while his prior wife was living.' The plaintiff's right to recover in that case was based upon the fraud of the defendant. It could not be considered an authority in support of the contention of the plaintiff in this case. In Robbins v. Potter, 98 Mass. 532, cited by appellants, the plaintiff sued to recover money advanced to defendant by her while they were living together as husband and wife under a marriage which both parties knew to be void. The court in that case held, in substance, that while the plaintiff would not be allowed to recover for services rendered to defendant during the existence of the illegal relation between them, still she could recover for money loaned defendant during that period, and which he had expressly contracted to pay. Cooper v. Cooper, 147 Mass. 370, 17 N. E. Rep. 892, cited by appellants, was an action for services, —held no recovery could be had. The case of Higgins v. Breen, 9 Mo. 497, is not in point,—another case of fraud by defendant. We have examined carefully all of the cases cited by counsel, and have found not one which supports, even by implication, the contention of appellants. Cooley, Torts, p. 279, has, under the head of 'Fraudulent Marriage,' the following: 'A serious wrong may be accomplished by inducing any one, through misrepresentation and fraud, to enter into an illegal marriage. * * * The tort in such a case consists in the fraud accomplished, to the woman's serious, and perhaps permanent, injury.' Counsel for appellants insist that, the injury of which plaintiff complains having been the result of the wrongful act of defendant, plaintiff should be entitled to recover therefor, the same as though defendant had assaulted or poisoned her. We do not recognize the parallel contended for. The injury complained of in this case could scarcely have arisen but for the illegal relations existing between the parties, and such relations were entered into voluntarily by plaintiff, and were not induced by any fraud or misrepresentation on the part of the defendant; and the plaintiff's incapacity to enter into marriage relations constituted the illegality. The injury was consequent upon her own illegal act, and we know of no principle of law authorizing recovery for injuries in such a case."

ADVERSE POSSESSION—INTERRUPTION—TAX SALE.—In Harrison v. Dolan, 52 N. E. Rep. 513, decided by the Supreme Judicial Court of Massachusetts, it was held that where a tenant has continued in adverse possession of land for over twenty years, the fact that during his occupancy there was a sale and conveyance of the premises for taxes does not constitute an interruption of his possession. The court said in part: "Adverse possession is pure matter of fact, to be interrupted only by interrupting the possessor's exclusion of adverse claimants, abandonment of his claim, or a change in his intent. Whether the last two would have any effect unless they were manifested, we need not consider. In general, also, the effect of the adverse possession will not be abridged by a change of title. The adverse possessor *ex hipothesi* is a wrongdoer until the twenty years has elapsed. Commonly, at least, if not necessarily, his claim is adverse to all the world; and probably any dealings among the excluded parties, even when a deed by a disseisee is valid, would not affect him. Probably the purchaser would only stand in his seller's shoes. See Chapin v. Freeland, 142 Mass. 383, 387, 8 N. E. Rep. 128. At all events, the action of the original disseisee would be barred.

"When it is held that the disseisor's possession must be continuous in him and his predecessors in title during the whole time of limitation, and

when the statute does not run against the State, it may be held that the statute has not run if the State has had the title during a part of the time relied upon. Armstrong v. Morrill, 14 Wall. 120, 145; Braxton v. Rich, 47 Fed. Rep. 178, 188; Hall v. Gittings, 2 Har. & J. 112. But such decisions have no application to this case, if for no other reason, because the statute runs against the commonwealth as well as against private persons (Pub. St., ch. 196, sec. 11); and because, further, the commonwealth never had even a momentary title to the land.

"Again, the intimation in Abbot v. Railroad Co., 145 Mass. 450, 460, 15 N. E. Rep. 91, has no bearing. That intimation concerned the acquisition of a right of way across a railroad, and was to the effect that a user begun across an earlier three-rod location would be interrupted in its operation by a later five-rod location. In such a case, the wrongdoer has no possession. He merely commits a series of trespasses. Whether the acquisition and implied assertion of right on the part of a railroad company by a location be or be not sufficient to interrupt the running of prescription (see Powell v. Bragg, 8 Gray, 441; Brayden v. Railroad Co., 171 Mass. —, 51 N. E. Rep. 1081), the determination cannot help us in dealing with the effect attributed by statute to allowing oneself to remain disseised for twenty years.

"As there was not even a momentary possession under the tax deed, it is not necessary to consider whether the words and meaning of the statute would not bar a disseisee at the end of twenty years if he had been continuously kept out by a succession of disseisins, one upon another, beyond remarking that there is no analogy between this case and the attempted acquisition of an easement by prescription, where successive users of a way, without right, are merely successive trespassers, except in those cases where, by the doctrine of privity, the later wrongdoer can add the time of his predecessor's adverse use to his own.

"A more subtle argument than those which we have dealt with may be suggested. It may be said that as a tax sale, if valid, gives a good title as against all the world, it is like prescription, and really begins a new title, which can be barred only by twenty years of adverse holding after the new title begins. But we are not driven to consider this argument; because, if it prevailed, it could do the demandant no good. The tax purchaser was disseised by the tenant's continued adverse possession, and his deed to the demandant before St. 1891, ch. 354, conveyed no title as against the tenant. Faxon v. Wallace, 98 Mass. 44, 45; McMahon v. Bowe, 114 Mass. 140. In Davels v. Collins, 43 Fed. Rep. 31, 33, where the jury were instructed that a sale for taxes would break the running of time in favor of the disseisor, it seems to have been assumed that the conveyance of the tax title to the demandant was good. It is stated that the plaintiff was 'clothed with whatever title passed by these tax deeds.' *Id.* 34. If the conveyance of the tax title to the plaintiff was bad, then, since the very meaning of the statute of limitations is to bar liability for a wrong, and as the disseisin was a wrong to the demandant before the sale for taxes as much as, if not more than, afterwards, and was the same wrong, we do not perceive any ground in the tax sale, taken by itself, to prolong the demandant's right of action.

"If the conveyance of the tax title to the demandant were good as against the tenant, it might be necessary to consider whether a tax sale is adverse, and, as in the case of a title by disseisin or prescription, creates no privity with former owners, or whether, although it takes all titles, it conveys them in privity like a sale on execution. Pub. St., ch. 12, sec. 38. The question is not decided by Langley v. Chapin, 134 Mass. 82. Even if the former view were taken, it still possibly might be held that no mere change of title, except one which puts it where it is above the statute, as in the sovereign apart from statute, can prevent the gaining of a later title, which also is adverse to all the world, and is the result of an adverse holding, uninterrupted in fact for twenty years. Upon these points we express no opinion."

WHAT IS A VALID LIMITATION TO CEASE UPON MARRIAGE OR A CONDITION VOID AS BEING IN RESTRAINT OF MARRIAGE?

Scarcely a branch of the old common law abounded with so much conflict and such subtle distinctions, as that of this question when does and when does not a devise or conveyance cease upon the marriage of the donee or devisee, or, in other words, what is a condition in restraint of marriage, and, therefore, void, and what a limitation to cease upon marriage, and, therefore, valid. The American courts have evolved some leading principles, out of the contradictory mess of the English decisions, and thereby cleared away much of the fog of the ancient learning, so that the conclusion of Mr. Redfield[1] is no longer true, when he says, that beyond certain general rules, "the cases seem to resolve themselves into the mere judgment of the court upon the circumstances of each particular case." The uncertainty of the authorities and refined distinctions laid down in the decisions led Lord Loughborough to say[2] "that such was the state of the authorities, a judge could not be considered to act too boldly, whichever side of the proposi-

[1] Redf. Wills (2d. Ed.), p. 297.
[2] Stackpole v. Beaumont, 3 Ves. 98.

tion he should adopt." This remark was made upon the point that a bequest over was necessary to make a limitation good. But that other phases of the subject give rise to the same observation is fully proven by conflicting English and a few American cases upon the various propositions, arising from this subject. We are here concerned with the modern American doctrine on this interesting topic, and shall attempt to formulate some of the more important principles established by the decisions. In an early Pennsylvania case[3] it was said: "As proper to frame a condition certain words are recognized, among which three are said to be most appropriate to make an estate conditional, namely, *proviso*, *ita quod* and *sub conditione*." * * * "In Cromwell's case[4] it was settled that three things are necessary to make these words a condition: 1st. That the clause where they occur have no dependence on another in the deed, but stands originally by and of itself. 2d. It be the language of the feoffor; and 3d. It be compulsory on the feoffee." This case, so far as an extensive research has shown, stands alone among the American decisions in laying down these subtle distinctions. And while some of the refinements of the common law are followed, the great preponderance of our courts is against such fine-spun reasoning. In Hotz's Estate[5] the court said: "The distinction between a bequest to which a condition is appended in restraint of marriage, and a limitation of an annuity or bequest to continue so long as a woman remains unmarried, has been fully recognized by our decisions. The difference between a condition in restraint of marriage and a limitation designating marriage as the extent of the bequest is a narrow one, and in some cases the difficulty is to ascertain to which class a bequest belongs." * * * "In this bequest no prior estate or interest is given to which a condition is annexed. No estate is to be defeated by her marriage, for none is given." And it was held, that the language "for and during all the term she shall continue a widow," was a valid limitation. But on the other hand, where a testator, by a codicil, directed the trustee to pay over to a nephew the net income of property "so long as he remain unmarried," held void as a condition against marriage.[6] The authorities are reviewed in Arthur v. Cole,[7] and it is said, quoting from Morley v. Rennoldson,[8] that "a gift, until marriage, is a valid limitation, for in such case there is nothing to give an interest beyond marriage. But in a gift sought to be abridged by a condition, the condition may be struck out and the original gift left in operation; but if a gift is until marriage and no longer, there is nothing to carry the gift beyond the marriage." And held, that the devise to a sister "so long as she lives or until marriage" is a valid limitation. Such language in most cases is held a valid limitation,[9] and in others a condition and void.[10] A devise "for and during natural life, unless she shall be married, in which case the gift is to cease. So long as she remains unmarried she is to have the exclusive use," held a valid limitation and not a condition.[11] And a devise to the wife of testator "should she remain his widow" was held a valid limitation.[12] But the language "if she so long remain a widow" was held a condition and void.[13] The court say: "The point in this case is a narrow one, and the same as if the testator had said, I give my daughter-in-law an annuity for life, but if she marry again it shall cease." A devise absolute in terms was directed on marriage to cease,[14] held a condition; but in Tennessee, as in most of the other States, held good as against a second marriage. The court say: "No question has been the subject of more controversy and contrariety of judicial opinion than that of provisions like this, whether they be limitations or conditions in restraint of marriage." The term "during widow-

[3] Paschall v. Passmore, 15 Pa. St. 307.
[4] 2 Co. 71*a*.
[5] 38 Pa. St. 422.

[6] Otis v. Prince, 10 Gray, 581. To same effect see Randall v. Marble, 69 Me. 310; Waters v. Tazewell, 9 Md. 291.
[7] 56 Md. Rep. 100.
[8] 2 Hare, 570, the leading English case.
[9] Little v. Birdwell, 21 Tex. 597; Bringle v. Dunkley, 14 Smed. & M. 16; Harmon v. Brown, 58 Ind. 207; Coppage v. Alexander, 2 B Mon. 313; Wooten v. House, 36 S. W. Rep. 932; Duncan v. Phillips, 3 Head, 415; Hughes v. Boyd, 2 Sneed, 512; Parsons v. Winsow, 6 Mass. 173; Hawkins v. Skegg, 10 Humph. 31; *In re* Bruch's Estate, 185 Pa. 194, 39 Atl. Rep. 813.
[10] Coon v. Bean, 69 Ind. 474; Stillwell v. Knapper, 69 *Id.* 558.
[11] Mann v. Jackson, 35 Cent. L. J. 383, where authorities are collected.
[12] Phillips v. Medbury, 7 Conn. 568.
[13] Hopper v. Dundee, 10 Pa. St. 75. See also Mickey's App., 46 *Id.* 340.
[14] Herd v. Catron, 97 Tenn. 662, 37 S. W. Rep. 551, 37 Lawy. Rep. Ann. 731.

hood" is undoubtedly a limitation.[15] And a direction that the "devise shall end on marriage,"[16] held valid as a limitation. So a devise "to dispose of as she sees best, sell, bargain and convey, as much as myself in person, to all intents and purposes, in law and equity, that is to say, during the time she lives my widow or in my name," held a limitation, and that "it does not follow, that, because the appellee was given the absolute power to sell and dispose of the property, that she took a fee-simple estate in the land."[17] A devise in trust for the "benefit of C but in case of marriage then in trust for E" held a conditional limitation and valid.[18] But where the bequest was "during single life, and forever, if her conduct should be orderly and she remains a member of the Society of Friends," by marrying a man not a member, the devisee ceasing to be a member; held a condition and void. Maddox v. Maddox, *supra*, just cited.

Where the intent is to give the use until marriage, that is a limitation, but where an estate is given absolutely, and the donor or testator seeks to inhibit a marriage by a provision that the property, in that event, shall pass to another, this makes a condition, and hence is of no effect. What are apt words to create a condition? Chief Justice Bigelow, in Rawson v. Smith,[19] said: "The usual and proper words by which such an estate (on condition) is granted by deed are 'provided,' 'so as,' or 'on condition,' or by the words '*si*,' '*quod si*,' '*contingat*,' and the like." These words, with practical unanimity, are held to create an estate on condition.[20] Tiedeman on Real Property[21] says such phrases as "on condition," "provided," "if it shall happen," etc., are found in constant use in order to create a condition;[22] and he says further, that "they do not necessarily have this effect even in devises, if the testator appears to have had a contrary intention." An examination of the authorities[23] relied on by him to sustain this last proposition were cases where, by the terms of the instrument, the donee or legatee was directed to pay a certain sum of money as a condition. There are other cases where such a direction was considered to be a charge upon the property, and not a condition upon the performance of which the enjoyment of the estate depended.[24] Where it was apparent from the whole deed that it was not the intention of the donor to create a forfeiture, the words, "upon condition," were held not to have that effect.[25] And these words in a trust were determined not to create a condition of forfeiture, for the reason "that if the land went to the heirs they would take as trustees."[26] And where it was provided in a grant that a dam should be built three rods wide, held to simply designate the kind of a dam which should be built.[27] It is said that "the technical words 'upon condition,' 'provided that,' 'so that,' 'of,' etc., are not necessary to make a condition, neither do they always create one."[28] And words more often create a condition in a will which would not if used in a deed.[29] And another rule is that "unqualified restrictions are not favored, and should be construed strictly so as to favor those on whom the restraints are laid."[30] To sum up the result of the cases, it may be stated thus: 1. That where the intent is clearly to give the use until the marriage takes place, and nothing is given beyond that, it is a limitation.

[15] Hibbitts v. Jack, 97 Ind. 570; Hawkins v. Skegg, 10 Humph. 31.

[16] Martin v. Siegler, 32 S. Car. 267, 10 S. E. Rep. 1073.

[17] Leavengood v. Hoople, 124 Ind. 28, 24 N. E. Rep. 373, approving Coon v. Bean, *supra*.

[18] Seldon v. Keen, 27 Gratt. 576, approving Maddox v. Maddox, 11 *Id.* 804.

[19] 7 Allen, 128.

[20] Raley v. County, 13 Pac. Rep. 894; Shepherd, Touchstone, 126; Hayden v. Stoughton, 5 Pick. 528; Binnerman v. Weaver, 8 Md. 517; Heaston v. Board, 20 Ind. 403; Rich v. Atwater, 16 Conn. 419; 3 Kent, 120; 2 Green, 1; Cruise, p. 2; Co. Lit. 201; Selden v. Pringle, 17 Barb. (N. Y.) 458.

[21] Sec. 272.

[22] Citing 2 Washb., Real Prop. 4; Vander's Estate, 7 Pa. Co. Ct. 482; Miller v. Supervisors, 7 South. Rep. 429; Wilkesbarre v. Society, 19 Atl. Rep. 809; Cullen v. Sprigg, 83 Cal. 56; Jenkins v. Compton, 23 N. E. Rep. 1090

[23] 2 Washb., Real Prop. 4; Wheeler v. Walker, 2 Conn. 201; Hayden v. Stoughton, 5 Pick. 528; Austin v. Parish, 21 Pick. 215; Sturdevant v. Mayor, 11 Paige Ch. 427; Lindsey v. Lindsey, 45 Ind. 552.

[24] Heard v. Horton, 1 Denio, 165; Jenkins v. Compton, 23 N. E. Rep. 1090.

[25] Mission v. Appleton, 117 Mass. 326.

[26] Sohier v. Church, 109 Mass. 1.

[27] Chapin v. Harris, 8 Allen, 594.

[28] City v. Society, 19 Atl. Rep. 813; Wheeler v. Walker, *supra*.

[29] 2 Washb., Real Prop. 3; Bray v. Hussey, 22 Atl. Rep. 220; Duke of Norfolk's Case, Dyer, 138*b*; Portington's Case, 10 Coke, 42*a*; Ryan v. Porter, 61 Tex. 111.

[30] Waters v. Tazewell, 9 Md. 291; Chitty, Cont. (6th Am. Ed.), § 671; Story, Cont. 557. See also Chapin v. District, 35 N. H. 445.

2. That where an estate is given absolutely, and a condition is annexed that this shall be defeated upon marriage, it appearing to be the intention to restrain marriage, this makes a condition, and is void. 3. Where a money charge is laid upon the property, and all the donee can expect under the gift is the amount of the money so given, this is not a condition, but a charge upon the property simply, although the usual and apt words creating a condition are used. 4. That these words, "provided," etc., usually create a condition, but where it appears from the whole instrument that the testator or grantor did not intend a condition, they will not be so construed. 5. In a will these words more often will be held to mean a condition, where they would not in a deed. It may be added that generally where a legacy over is given, even a condition is not void as against a second marriage.[31] But in California, Indiana, and, perhaps, a few other States, such a condition is void as to a widow or widower.[32] We may further add that a provision in a will that "testator's daughter should forfeit her right to the income of the residuary estate" until she shall be divorced, is void;[33] but a bequest to trustees for the use of testator's son until such time as he should become unmarried, in which event he was to have the land in fee was held valid, where the facts were that the son and his wife had been separated for years, and a divorce proceeding had been pending prior to the making of the will, and it being a condition precedent as the title could not vest until performance of the condition.[34] The limits of this paper forbid the discussion of other features of this question, but those interested may be referred to the note to the case of Coppage v. Alexander, 38 Am. Dec. 156; Note to Phillips v. Fergerson, 1 L. R. A. 837; Scott v. Tyler, White & T. Lead. Cas. in Eq. 429, 512; 1 Story's Equity (11th Ed.), §§ 274, 291; Vol. 29 Am. & Eng. Ency. of Law, 476 *et seq.*

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[31] Herd v. Catron, 37 S. W. Rep. 550, 44 Cent. L. J. 3; Bennett v. Packer, 70 Conn. 357, 39 Atl. Rep. 739.
[32] Cal. Civ. Code, § 710; Hopper v. Dundee, *supra*; Stillwell v. Knapper, 69 Ind. 558.
[33] Cruger v. Phelps, 47 N. Y. Supp. 61.
[34] Ransdell v. Boston, 172 Ill. 439, 50 N. E. Rep. 111.

LIFE INSURANCE—RIGHT TO ASSIGN POLICY —INSURABLE INTEREST.

STEINBACK v. DIEPENBROCK.

Court of Appeals of New York, January 10, 1899.

A valid policy of life insurance may be assigned to one having no insurable interest in the life of the insured.

PARKER, C.J.: The counsel for the appellant, in his argument, insisted with earnestness and force that the position several times asserted by this court in support of the legality of the assignment of a policy of insurance to a person having no insurable interest in the life of the insured is a mistaken one, and in conflict with the decisions of the United States Supreme Court and the court of last resort in many of the States. Warnock v. Davis, 104 U. S. 775; Insurance Co. v. Hazzard, 41 Ind. 116; Insurance Co. v. Sturges, 18 Kan. 93; Schonfield v. Turner, 75 Tex. 324, 12 S. W. Rep. 626; Basye v. Adams, 81 Ky. 368; and Helmetag's Admr. v. Miller, 76 Ala 183.—furnish support for his assertion as to the rule in the United States Supreme Court and in some of the other States. Supported by these authorities, the counsel challenged the correctness of the rule that concededly has been long acquiesced in this State by the courts and the profession. Indeed, Mr. Justice Field, in his opinion in Warnock v. Davis, *supra*, stated the rule in this State to be that a valid assignment of a policy of insurance could be made to a person without interest in the insured. But the appellant contends that, while this may be the rule here, the decisions in other jurisdictions demonstrate that our position is wrong as a matter of sound public policy, and, therefore, the true rule should be laid down, notwithstanding that expressions inducing the belief that the above rule obtained may have been made by our courts. It is urged that this task will not be a difficult one, for the reason, as the appellant contends, that there have been no cases in this State where the question was necessarily up for decision, and, therefore, all that has been said upon that subject by this court is mere *dictum*.

In St. John v. Insurance Co., 13 N. Y. 31, a recovery in favor of the plaintiff against an insurance company was sustained where it appeared that one Noyes had effected policies of insurance, upon his own life and shortly afterwards assigned them to the plaintiff for a valuable consideration. In the answer the defendant alleged, by way of defense, that the plaintiff was entitled to recover only the amount of money that he had advanced as a consideration of the transfer of the policy to him, and that, if defendant was liable beyond such amount upon the policy, the personal representatives were interested in the excess, and, therefore, necessary parties to the suit. And upon the close of the evidence the counsel for the defendant pressed the point that the plaintiff had no insurable interest in the life of the insured, and, therefore, was

not entitled to judgment. The court regarded the question as one necessary to be passed upon in the final disposition of the case, and, after considering it, held that the policies in question were valid in their inception, and that the assignment of them to the plaintiff did not affect the liability of the company, and that to entitle the assignee to a recovery it was not necessary for him to have had an insurable interest in the life of the insured. The next case was Valton v. Assurance Co., 20 N. Y. 32, where Schumacher obtained a policy on his life for $10,000, and by his articles of co-partnership agreed that the plaintiff and another partner should become the owners of the policy and all due thereon in the event of his death before the termination of the partnership. This contingency happened, and the court held that it operated to vest absolutely the title to the policy in the plaintiff and his other partner, and a recovery could be had thereon as against the defendants. It will be observed that in the cases cited the contest was between the assignee and the company issuing the policy, and the question was not squarely presented whether, as between the assignor and the assignee, the assignee would be entitled to retain more than the sum actually invested by him, which is the rule in some jurisdictions. But it necessarily was decided that the policy was not rendered invalid by the assignment, and, further, that the assignee acquired thereby the right to enforce collection of the full amount of the policy from the company.

In Olmsted v. Keyes, 85 N. Y. 593, the plaintiff, having obtained the proceeds of a policy of life insurance, brought an action for the purpose of ascertaining and determining the conflicting claims of various defendants to the moneys paid on the policy. It appeared that Keyes procured a policy of insurance on his life, payable to the plaintiff as trustee for his wife Huldah; Huldah died intestate a few years later; afterwards Keyes married again, and thereupon the plaintiff, for value, assigned the policy to Keyes' second wife, at his request. Keyes subsequently died intestate, leaving, him surviving, his widow and one child by her and several children by his first wife. It was held that during the life of the first wife the policy was her property, and upon her death the title vested in her husband as survivor, and, he having caused it to be assigned to his second wife, the assignment vested the title in her, and she alone was entitled to the money due thereon. There was a difference of view in court as to the dispositon of the case, and the argument that led to the decision considered with care the assignability of a policy of life insurance like any other contract. In the course of the argument the court referred to and considered many authorities in England and in this country, and reached the conclusion that, while an insurable interest is necessary to enable one to take out a policy of insurance on the life of another, it is not necessary that the assignee of a policy validly issued should have such an interest. After careful examination of that opinion, we find it impossible to reach any other conclusion than that it was intended to put at rest whatever controversy there may have been in this State touching the assignability of a valid policy of insurance. The case at bar is the only one we know of where the rule laid down in the case last referred to has been seriously questioned, although it is true that some discussion of the principle was had in Wright v. Association, 118 N. Y. 237, 23 N. E. Rep. 186, where the defendant unsuccessfully challenged the right of the assignee to recover, on the ground, among others, that the plaintiff had not an insurable interest in the life of the insured at the time of the assignment. The court in its opinion cited the case of Olmsted v. Keyes, *supra*.

The result of our further examination persuades us that what has been understood to be the rule in this State is not only in line with the authorities in most jurisdictions upon that subject, but is sound as a matter of public policy. It was formerly the rule in England that, while a policy of insurance could not be assigned at law, it could in equity. By the act of 1867 (30-31 Vict. ch. 144) a policy of life insurance was made assignable at law, and in some of the decisions it was said by the court that the object of the statute was to enable the assignee to sue in his own name; but it did not in any other way improve the position of the assignee, who could before that secure the money in equity. British Equitable Ins. Co. v. Great Western Ry. Co., 38 Law J. Ch. 132; *In re* Turcan, 40 Ch. Div. 5. The rule asserted by this court has also been held to be the law in many of our sister States in a number of cases, where the question has been raised either in actions brought by personal representatives of the assignor to recover the money received by the assignee on a policy or in suits brought by the company issuing the policy for the purpose of determining whether the personal representatives or the assignee were entitled to the proceeds, all claimants being made parties defendant. Insurance Co. v. Allen, 138 Mass. 24; Eckel v. Renner, 41 Ohio St. 232; Martin v. Stubbings, 126 Ill. 387, 403, 18 N.E. Rep. 657; Fitzgerald v. Insurance Co., 56 Conn. 116, 13 Atl. Rep. 673, and 17 Atl. Rep. 411; Clark v. Allen, 11 R. I. 439; Murphy v. Red, 64 Miss. 614, 1 South. Rep. 761; Rittler v. Smith, 70 Md. 261, 16 Atl. Rep. 890. These authorities are, it seems to us, well grounded in principle. They recognize not only the existence of, but the necessity for, the rule that forbids any insurance upon the life of a person in which the person for whose benefit the insurance is made has no interest. Such a policy constitutes what is termed a "wager policy," or a mere speculative contract upon the life of the insured, with a direct interest in favor of its early termination. It is, in terms, forbidden by the statute in England (14 Geo. III. ch. 48) and in many other jurisdictions, including this State (Laws 1892, ch. 690, §

55); and this court held in Ruse v. Insurance Co., 23 N. Y. 516, that such insurance is void at common law, and that the English statute, in so far as it prohibits such insurance, is merely a declaratory act.

But the question we are considering presupposes a valid contract of insurance, the policy being issued either for the benefit of the assured personally, or for the benefit of some one having an insurable interest in the assured at the time of the taking out of the policy. Such a policy constitutes a contract to pay a certain amount of money to the payee on the death of the assured. It is a chose in action, with all the ordinary incidents belonging thereto, and as such may be assigned, either as collateral or absolutely, as the payee may elect. While an insurable interest in the payee is necessary, in the first instance, to the creation of a valid contract, it is not necessary that such interest should continue. The case of a wife divorced from her husband will serve as an illustration. The policy taken out for her benefit during the existence of the married relation is not affected by a subsequent severance of that relation through a decree of a court of competent jurisdiction, by which she ceases to have an insurable interest in his life. Insurance Co. v. Schaefer, 94 U. S. 457. The materiality of the value of the interest has relation to the question whether the policy is taken out in good faith, and not as a gambling transaction. If it be taken out in good faith, then a sound public policy would seem to require that the payee should be permitted to treat it as he may any other chose in action, and go to the best market he can find, either to sell it or borrow money on it. It would substantially confine him to such terms as the company issuing the policy should choose to make with him, if he should be limited in his choice of a purchaser to the party having an interest in the continuance of the life assured.

On the other hand, it is said that, if the payee of a policy be allowed to assign it, a safe and convenient method is provided by which a wagering contract can be safely made. The insured, instead of taking out a policy payable to a person having no insurable interest in his life, can take it out to himself and at once assign it to such person. But such an attempt would not prove successful, for a policy issued and assigned, under such circumstances, would be none the less a wagering policy because of the form of it. The intention of the parties procuring the policy would determine its character, which the courts would unhesitatingly declare in accordance with the facts, reading the policy and the assignment together, as forming part of one transaction. Cammack v. Lewis, 15 Wall. 643, and Warnock v. Davis, 104 U. S. 775, were cases where the policies were taken out in order that they might be assigned to the assignees, through their procurement, under circumstances that might well be held to be an invasion of the law prohibiting gaming policies. In Warnock's case the agreement touching the procurement of the policy and the use to be made of it, including the promise to assign it, was in writing, and executed the very day the policy was applied for, and the day following the assured executed an assignment of the policy, which had in the meantime been issued in pursuance of such an agreement. The insurance company paid over the money to the assignee, and the court held that the personal representatives of the assured were entitled to receive from the assignees all the money, except the sums advanced by them under the agreement, plus the sum paid them to the widow. In the opinion it said that the assignment of the policy to a party not having an insurable interest is as objectionable as the taking out of a policy in his name. That remark was clearly true as applied to the facts of that case, for the policy was taken out in pursuance of an agreement to assign it. It was, therefore, in fact, a policy taken out for the benefit of parties having no insurable interest, although in form issued to the assured, and by him assigned to such parties. In such case the court will always declare the fact to be as it is, without regard to the effort of the parties to hide the truth and cheat the law. But the language employed by the court, and evidently advisedly, is broad enough to cover all assignments of policies to parties not having an insurable interest, including as well those taken out in good faith, and kept up as long as the financial condition of the insured permits, as those deliberately taken out for the purpose of speculation upon a life that the intended beneficiary, whether as payee in the policy or by assignment, has no interest in prolonging. The point of actual separation between the cases asserting the assignability and those asserting the non-assignability of policies of insurance to persons not interested in the continuance of the life of the assured seems to be that those asserting non-assignability proceed on the assumption that the question is one of law, and that, if a policy is not assignable in one case, it cannot be in any case; while in the other line of cases the underlying principle is that all valid contracts are assignable, but that contracts are not necessarily valid and free from the taint of gambling because upon their face they appear to be regularly and properly issued. In order to ascertain the truth, all the facts and circumstances may be proved, and if it then appear that the parties intended by the contract to enable a third and uninterested party to speculate upon the life of another, the court will declare such contract invalid, not because of the assignment, but in spite of it.

Warnock's case and this one are very wide apart in their facts, and serve very well to illustrate the necessity for the position taken by the courts of this State upon this general subject. In December, 1887, Alois Diepenbrock took out a policy of insurance on his life in the Equitable Life Assurance Society. He paid the premiums

regularly down to December, 1892, a period of about five years, at which time the surrender value of the policy was about $485. He was pressed for money, and finally sold the policy to the defendant Erdtmann for $600, or something like $115 more than he would have received by the surrender of the policy to the company. He had paid a much larger sum in premiums,—something over $2,000,—and there seems to be no good reason why a person owning such a policy, and obliged to sell it, should not be permitted to get back as much as possible of the money that he has paid out for insurance. His condition of health may have changed very materially, of which fact the company can take no advantage; for in its contract it made allowance for that possibility. There is no good reason for saying that an insured person should not have the right, whenever his necessities press him, because of a failing condition of health that assures a speedy death, to realize on his policy, and obtain for it something like a fair price, which may, perhaps, be almost equal to its face value.

The personal representatives of the assured contested the assignment, also, on the ground that it was intended as collateral, although in form a valid assignment; but the special term found otherwise, and the appellate division approved that finding, so that question is no longer open to consideration.

Affirmed.

NOTE.—*Recent Decisions on the Subject of Insurable Interest in Life Insurance.*—Insured took out a life policy, payable to her son if he lived, otherwise to her estate, and paid the first premium. The son paid the other premiums, but testified that he managed her estate, and paid them in her behalf, and his testimony was corroborated by circumstances. Held, that the policy was not void as a wager policy. Heinlein v. Imperial Life Ins. Co. (Mich.), 59 N. W. Rep. 615. One has an insurable interest in the life of another, who, out of friendship, and without any bonds of kinship, has assumed the position of father to him. Carpenter v. United States Life Ins. Co., 161 Pa. St. 9, 28 Atl. Rep. 943, 34 W. N. C. 195. Whatever insurable interest one may have in his partner's life ceases when the latter retires unindebted to the firm; and where each of two partners took out a policy on his life payable to the firm, and premiums of like amount on each were paid out of the firm's assets, the continuing partner has no claim on his retired partner's policy as against the latter's estate. Cheeves v. Anders (Tex. Civ. App.), 25 S. W. Rep. 324. A policy of life insurance procured by a religious society, supported largely by voluntary contributions, on the life of one of its members, is void as a wagering contract. Trinity College v. Travelers' Ins. Co. (N. C.), 113 N. 244, 18 S. E. Rep. 175. As an insured may make a person who has no insurable interest in his life the beneficiary in the life policy, the fact that the premiums are paid by such beneficiary does not render the policy void, but the courts will consider him a trustee for the benefit of those legally entitled to the policy. Mutual Life Ins. Co. of New York v. Blodgett (Tex. Civ. App.), 27 S. W. Rep. 286. Where the assignee of a mutual benefit life insurance policy of $2,000 pays the insured $300, and agrees to pay the dues and the assessments thereon, in consideration of the assignment, the assignment is not invalid as a gambling transaction, in the absence of proof of the age or expectancy of life of the insured. Nye v. Grand Lodge A. O. U. W. (Ind. App.), 36 N. E. Rep. 429. Where an insurance company admits liability on a policy payable by name to decedent's daughter if surviving, otherwise to the personal representatives, and pays the amount thereof in court, if the evidence establishes the identity of the defendant daughter with the beneficiary named in the policy, the administrator has no interest in the policy, and the question of the daughter's insurable interest is immaterial. Standard Life & Accident Ins. Co. v. Catlin (Mich.), 63 N. W. Rep. 897. The prohibition by Rev. St., sec. 5866, of life insurance in favor of a person having no insurable interest, applies only to insurance in assessment companies, and is only declarative of the common law. New York Life Ins. Co. v. Rosenhein, 56 Mo. App. 27. Where the beneficiary of a life insurance policy, who has no insurable interest in the assured, collects the money due on the policy, he is liable to the legal representative of the assured therefor. Riner v. Riner (Pa. Sup.), 166 Pa. St. 617, 31 Atl. Rep. 347. Where an applicant for life insurance caused the policy to be issued in favor of another, the effect is the same as if it had been issued to the applicant, and assigned to such other person; and therefore the policy is not subject to the objection of want of insurable interest. Glassey v. Metropolitan Life Ins. Co., 32 N. Y. S. 335, 84 Hun, 350. A mere friend has no insurable interest, and cannot be the beneficiary of a life insurance policy, though the insured voluntarily makes it payable to him. Condell v. Woodward (Ky.), 29 S. W. Rep. 614. One not the wife, child, parent, brother, sister, or creditor of insured may have an insurable interest in his life. Kentucky Life & Acc. Ins. Co. v. Hamilton (C. C. A.), 63 Fed. Rep. 93, 11 C. C. A. 42. Under Laws 1893, ch. 175, conferring on a mother rights and duties in respect to her children equal to those possessed by the father at common law, she is liable for the support of her child, within the Laws 1892, ch. 690, sec. 55, allowing the one so liable to insure its life. O'Rourke v. John Hancock Mut. Life Ins. Co. (Com. Pl. N. Y.), 31 N. Y. S. 130, 10 Misc. Rep. 405. An uncle living on his sister's place, and keeping his nephew, the child of his sister, has no insurable interest in such child. Prudential Ins. Co. v. Jenkins (Ind. App.), 43 N. E. Rep. 1056. Where a widow, with two unmarried children, and her son-in-law, live together as one family, both before and after the death of his wife, pursuant to a temporary and indefinite arrangement between him and his mother-in-law, and he pays no more than a reasonable price for his board, the mother-in-law has no insurable interest in his life. Adams' Admr. v. Reed (Ky.), 36 S. W. Rep. 568. At common law a sister has an insurable interest in her brother's life. Hosmer v. Welch (Mich.), 67 N. W. Rep. 504. Where a husband separated from his wife without a divorce, and thereafter, until his death, lived with his sister paying no board, and was nursed and cared for by her as a member of the family, a policy on the brother's life, issued in favor of the sister by a company organized under an act authorizing the insured to name the beneficiary, who might be one of the "family" or an heir, was valid, though the wife of deceased survived him. Hosmer v. Welch (Mich.), 67 N. W. Rep. 504. A minor daughter has an insurable interest in the life of her father. Geoffrey v. Gilbert, 38 N. Y. S. 643, 5 App. Div. 98. A creditor has an insurable interest in the life of his debtor. Talbert v. Storum (Sup.), 39 N. Y. S. 1047. In an action by the

assignee of a policy of life insurance for $2,000, where the consideration paid therefor was shown to be $700, and there was no evidence as to the assured's expectancy of life when the policy was issued or when it was assigned, there was not such a disproportion between the amount of the policy and the consideration as to bar a recovery on the ground that the assignment was in the nature of a wagering contract. McHale v. McDonnell, 175 Pa. St. 632, 34 Atl. Rep. 966, 38 W. N. C. 345. The objection that one claiming a life insurance fund as assignee of a policy did not have an insurable interest in the life of assured cannot be raised by a rival claimant to the fund, the insurance company having paid the money into court without objection. Meyers v. Schumann (N. J. Err. & App.), 34 Atl. Rep. 1066. A complaint to recover on a policy issued to plaintiff on the life of his mother alleged that plaintiff was liable for the support of the assured under the laws of Illinois, where they lived when the insurance was effected; that plaintiff supported and maintained the assured until her death; that under the same law the assured was liable for the maintenance of plaintiff; and that thereby plaintiff had a valuable pecuniary interest in his life. The statute of Illinois, a copy of which was filed with the complaint, gives no right of action by the son against the mother, or *vice versa*, for non-support, but creates a legal liability in behalf of the town or county. The exhibits filed with the complaint showed that the assured was 76 years old when the policy was issued, and there was nothing to show that plaintiff expected any benefit from her in the way of service or maintenance. Held that the complaint failed to show that plaintiff had an insurable interest in the life of the assured. People's Mut. Ben. Soc. v. Templeton (Ind. App.), 44 N. E. Rep. 809. A son-in law has no insurable interest in the life of his father-in-law. Ramsey v. Myers (Com. Pl.), 6 Pa. Dist. R. 468. A woman has an insurable interest in the life of her intended husband. Taylor v. Travelers' Ins. Co. (Tex. Civ. App.), 39 S. W. Rep. 185. A widow and her son-in-law, during the lifetime of his wife, lived together, the mother-in-law doing the housework and each furnishing one-half the supplies. They kept boarders and divided the profits; and the same arrangement was continued after the death of the wife, who was the beneficiary of an insurance policy of her husband's life. After the wife's death, and the refusal of the insured's relatives to pay the premiums and keep the policy alive, the mother-in-law was persuaded to do so, and the policy was assigned to her by consent of the company. Held, that the assignment was binding, and not in violation of a sound public policy, for want of an insurable interest, there being nothing in the policy or company's charter preventing it, and the company making no question with the assignee on any ground. Adams' Admr. v. Reed, 38 S. W. Rep. 420. Plaintiff, beneficiary of a certificate on the life of his mother, being unable to continue the payment of assessments thereon, made an agreement with defendant, who had no interest in the life of the insured, to keep up the payments during the life of the insured for one-half the insurance, and the certificate was exchanged for another, payable one-half to each. After the death of the insured defendant collected the certificate, and paid one-half to plaintiff, retaining the remainder. Held, that the transfer of an interest in the certificate to defendant was valid, in so far as it stood as security for advancements to be made, but invalid as to any further interest. Beard v. Sharp (Ky.), 38 S. W. Rep. 1057. An assignee of a life policy need not have an insurable interest. Dixon v. National Life Ins. Co. (Mass.), 46 N. E. Rep. 430. Where assured assigned a fire insurance policy to a creditor as collateral, and the insurer consented to the assignment, the assignor did not thereby part with his interest in the policy, but remained the assured, the loss being his, and the indemnity inuring to his benefit, though payable to the assignee to apply on his debt; and hence the fact that the assignee had no insurable interest was not a defense against a recovery on his policy. Morrill v. Colonial Mut. Fire Ins. Co. (Mass.), 47 N. E. Rep. 439. Insurance on the life of a husband for the benefit of his wife may be assigned to a person having no insurable interest in the husband's life, under Laws 1879, ch. 248, sec. 1, providing that such insurance may be assigned "to any person whomsoever." Fuller v. Kent (Sup.), 43 N. Y. S. 649, 13 App. Div. 529. One living with a person as his wife, though she is not such, has an insurable interest in him. Lampkin v. Travelers' Ins. Co., 52 Pac. Rep. 1040. A grandfather has an insurable interest in the life of his grandchild. Hilliard v. Sanford, 7 Ohio Dec. 448, 4 Ohio N. P. 363. An aunt has an insurable interest in the life of her niece, living with her at different times from early childhood, and whom she supports. Cronin v. Vermont Life Ins. Co., 40 Atl. Rep. 497. Where there is a mutual interest, as a moral obligation existing between the assured and beneficiary, it is sufficient to rebut the presumption of wager in a life insurance contract, and to constitute an insurable interest. Cronin v. Vermont Life Ins. Co., 40 Atl. Rep. 497. A child is presumed to have an insurable interest in the life of its mother. Crosswell v. Connecticut Indemnity Assn., 28 S. E. Rep. 200. A policy of life insurance, valid in its inception, may be assigned by the beneficiary, with the consent of the insured, to one having no insurable interest, where such assignment is not made for the purpose of avoiding the law against wager policies. Crosswell v. Connecticut Indemnity Assn., 28 S. E. Rep. 200.

BOOK REVIEWS.

COOLEY ON CONSTITUTIONAL LAW.

The attention of scholars and students particularly is called to this little book of nearly 400 pages, wherein the late Thomas M. Cooley discusses the general principles of constitutional law in the United States of America, upon which subject he is a recognized master. The present, which is the third edition, is by Andrew C. McLaughlin, L.L.B., Professor of American History in the University of Michigan. It seems unnecessary to say more in reference to this work, which is now well-known as one of the leading theses on constitutional law. It is published by Little, Brown & Company, Boston, Mass.

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This large volume covers all the reported decisions of all the courts in the United States, of the higher courts of England, and the Supreme Court of Canada, including all officially reported cases, and all cases not to be officially reported, which were first published between January 1, 1898, and July 1, 1898. It is not merely a digest, but it is also in effect an annotated digest, for to the best digest of every reported case there is added the authorities relied upon by the court outside its own decisions in the case digested, with citations of all cases criticised, distinguished, limited or overruled by the court in its opinion.

Second. The most important propositions from current decisions are annotated by the citation of the leading late live cases upon the point involved, showing the cases to similar effect or variant following the digest paragraph. A good feature of the work is that every syllabus or proposition begins with a black face abbreviation of the State from which the case comes. It must be admitted that the manner in which this series of digests is prepared is first class in every regard. Published by the Lawyers' Co Operative Publishing Co., Rochester, N. Y.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions, and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ACTION — Abatement and Revival.—Under Code 1886, § 2603, providing that no action abates by the death of plaintiff if the cause of action survive, but it must, within 18 months thereafter, be revived in the name of the personal representative, and section 2265, providing that when an action has been commenced by the personal representative of decedent it may be prosecuted by any succeeding executor or administrator, who may, on motion, be made a party, an action revived within 18 months, in the name of an administrator, cannot, on his resigning, be revived, after expiration of such time, in the name of the administrator *de bonis non*.—EX PARTE HOWELL, Ala., 24 South. Rep. 500.

2. ADMINISTRATION—Claim of Homestead—Res Judicata.—Persons having an interest in land as a homestead, who are made parties to a proceeding to sell it to pay the debts of decedent, but fail to set up therein their claim of homestead, cannot afterwards assert their claim against the purchaser at such sale.—HADDON V. LENHARDT, S. Car., 31 S. E. Rep. 883.

3. ADMINISTRATION—Commissions—Waiver.—A waiver of commissions in a petition for letters of administration does not deprive the administratrix of the right to commissions, where the waiver was without objection, and by leave of court withdrawn before she was appointed.—IN RE CARVER'S ESTATE, Cal., 55 Pac. Rep. 770.

4. ADMINISTRATION—Executors—Accounting.—Where testator gave his property to his wife for life, with direction that, in her discretion, she should make suitable advancements to their children as they became of age, or married, and provision that on her death the property then in her possession should be equally divided among said children, account be taken of advancements, and that, if any one of said children died before his mother, leaving issue, such issue should take his share, advancements to such a child dying before the mother intercept to that extent any right of his issue.—ROBERTSON V. BRECKINBRIDGE, Va., 31 S. E. Rep. 892.

5. ARBITRATION AND AWARD—Right to Change Award.—Where partners engage an accountant to settle the affairs of the firm, and bind themselves to abide by his findings, the accountant cannot, after making his report, change it without the consent of both parties, in order to correct an error resulting from entering an item twice.—HARTLEY V. HENDERSON, Penn., 42 Atl. Rep. 198.

6. ASSIGNMENTS FOR CREDITORS—Rights of Assignee.—An assignee for creditors stands in his assignor's shoes, and hence he cannot attack a pledge of the assignor's property because the change of possession was not sufficient.—GEORGE V. PIERCE, Cal., 55 Pac. Rep. 775.

7. ATTACHMENT—Foreign Building Association—Domestic Corporation.—A statute merely enabling a foreign corporation to hold property or do business in this State does not make it a domestic corporation, and it may be proceeded against by attachment as a foreign corporation.—SAVAGE V. PEOPLE'S BUILDING, LOAN & SAVINGS ASSN., W. Va., 31 S. E. Rep. 991.

8. ATTACHMENT—Forthcoming Bond.—The obligation of an attachment bond, made under Code Civ. Proc. §§ 554, 555, to pay the value of released property if plaintiff recovers judgment, and there is default in its delivery, is not destroyed by an assignment by defendant, under the insolvent act of 1880, though, under section 17 thereof, the attachment was thereby dissolved, and demand for the property could not be enforced against the assignee.—ROSENTHAL V. PERKINS, Cal., 55 Pac. Rep. 804.

9. ATTACHMENT—Redelivery Bond — Nonsuit.—Code Civ. Proc. § 553, provides that in attachment, if the defendant recover judgment, any undertaking received in the action and all property attached must be delivered to the defendant and "the order of attachment shall be discharged." Section 554 prescribes the proceeding to be taken to release attached property by giving a bond that "in case the plaintiff recover judgment in the action" the property shall be redelivered, or the value thereof paid, to the proper officer. Held, that a nonsuit discharges the sureties on such bond, notwithstanding the judgment of nonsuit is reversed on appeal and plaintiff finally recovers "judgment in the action" on a retrial.—HAMILTON V. BELL, Cal., 55 Pac. Rep. 758.

10. ATTORNEY'S LIEN—Assignment of Judgment.—An attorney at law has a lien upon a judgment recovered by him for his client for his compensation, which lien is good against an assignee of the judgment, though he had no notice of the lien.—BENT V. LIPSCOMB, W. Va., 31 S. E. Rep. 907.

11. BANKS—Insolvency—Application of Deposits.—A depositor's parol direction to a bank to apply his deposit in payment of a note payable at the bank is sufficient to authorize such application.—FIRST NAT. BANK OF CAMBRIDGE, ILL., V. HALL, Ala., 24 South. Rep. 526.

12. BANKS—Insolvency—Trust Funds—Public Moneys—Public money deposited by a public officer in a bank becomes a trust fund, and not part of the estate of the bank; and in case of the insolvency of the bank its re-

celver must treat such fund as the property of the true owner, and not of the bank.—STATE v. THUM, Idaho, 55 Pac. Rep. 858.

13. BANKS AND BANKING—Principal and Agent—Authority.—In the absence of special instructions, if a time bill of exchange with bill of lading attached be sent to an agent for collection, there is an implied obligation upon the agent to hold the bill of lading until the bill of exchange is either accepted or paid, according to circumstances; and he cannot deliver the bill of lading without requiring the one or the other.—OXFORD LAKE LINE v. FIRST NAT. BANK OF PENSACOLA, Fla., 24 South. Rep. 480.

14. BENEVOLENT SOCIETY — Insurance — Change of Beneficiary.—A member in good standing of the Royal Arcanum beneficial association may, by the substitution of another certificate, change the beneficiary named in his original certificate, without the surrender of the certificate, or the consent of the beneficiary therein.—HAMILTON V. ROYAL ARCANUM, Penn., 42 Atl. Rep. 186.

15. BILLS AND NOTES—Joint Payees—Indorsement.—Writing on back of negotiable note, signed by one of its two payees, "For value received, I hereby assign and transfer to F all right, title and interest that I may have in the within note," renders him liable to an innocent holder as an indorser, and not as an assignor, and without regard to the equities between him and the other payee, though F be such payee.—CITIZENS' NAT. BANK V. WALTON, Va., 31 S. E. Rep. 890.

16. BILLS AND NOTES—Pleading—Evidence.—Where, in an action on a note, one defense is a general denial, and another sets out the circumstances under which the note was made, but fails to put in issue the amount alleged in the complaint to have been paid thereon, proof of other payments is competent under the general denial.—BALL V. PUTNAM, Cal., 55 Pac. Rep. 773.

17. BONDS—Sufficiency of Promise to Pay.—Recovery may be had, upon a bond promising to pay at such times and in such sums as the maker might feel able to pay, upon allegation and proof that the maker was able to pay, and fraudulently refused to do so, although he knew he was able.—PISTEL V. IMPERIAL MUT. LIFE INS. CO. OF AMERICA, OF BALTIMORE CITY, Md., 42 Atl. Rep. 210.

18. BOUNDARIES — Adverse Possession.—Where the claims asserted by adjoining landowners as to their respective boundaries are such as to cause an interlock, and either of the parties is in actual adverse possession of a part of the land claimed by him under his deed outside of the interlock, and the other is in actual adverse possession under color of title of the land embraced in the interlock or land in controversy, claiming under and to the limits of his deed, the latter will, in contemplation of law, be regarded as being in the actual adverse possession of all the land in the interlock, not simply that actually occupied or inclosed by him.—VINTROUX V. SIMMS, W. Va., 31 S. E. Rep. 941.

19. CONTEMPT — Practice.—In proceedings for contempt, if the affidavits or motion for the rule to show cause be substantially defective, or the showing made for issuing the rule be insufficient, the proper practice is to move to discharge the rule.—CONTINENTAL NAT. BUILDING & LOAN ASSN. V. SCOTT, Fla., 24 South. Rep. 473.

20. CONTRACTS—Public Policy—Enforcement.—Where a trustee is proceeding to make sale of real estate at public auction, and R and B, after competing as bidders for some time, enter into a verbal agreement that R shall desist from bidding, and B should proceed as advised from time to time, and, if B became the purchaser, he was to divide the property purchased with R, such an agreement is a fraud upon the vendor, and, if B refuses to comply with the agreement, it cannot be enforced by R.—RALPHSNYDER V. SHAW, W., Va. 31 S. E. Rep. 953.

21. CONTRACTS—Work and Labor—Pleading.—A complaint alleging that plaintiff nursed and cared for defendant, and furnished him board and lodging "almost continuously," between certain dates, is not demurrable as uncertain for failure to show the amounts claimed for nursing, care and board and lodging, respectively.—MCFARLAND V. HOLCOMB, Cal., 55 Pac. Rep. 761.

22. CORPORATIONS—Authority of Officer.—Where the articles of incorporation and the by-laws of a company organized to loan money and purchase mortgages and real and personal property make no provision authorizing any particular officer or committee to pay debts or to accept satisfaction of debts, the secretary and treasurer has authority to agree to a transfer of real estate from a debtor of the company to one of its creditors as payment of the company's claim against the debtor, and as satisfaction of its debt to the creditor.—FIRST NAT. BANK OF LATROBE V. GARRETSON, Iowa, 77 N. W. Rep. 856.

23. CORPORATIONS — Bonds—Parties.—Where there is nothing in a bond of a corporation prohibiting an individual holder from bringing suit upon it, he may maintain such suit, although it, in common with others, is secured by a mortgage given to a trustee, which recites that there shall be no preference as to the various bonds secured.—WESTERN PENNSYLVANIA HOSPITAL V. MERCANTILE LIBRARY HALL CO., Penn., 42 Atl. Rep. 183.

24. CORPORATIONS—Foreign Corporations—Trustees.—A receiver, trustee, or assignee of a dissolved foreign corporation, appointed in the State of its domicile, may institute in the courts of this State suits in his own or the corporate name for debts or claims due such corporation.—SWING V. BENTLEY & GERWIG FURNITURE CO., W. Va., 31 S. E. Rep. 925.

25. CORPORATIONS—Set-off — Stockholders.—A stockholder in a corporation, who has paid the full face value of his stock, when proceeded against by a creditor of the corporation to enforce the statutory liability for the debts of the corporation, may show by way of set-off that the corporation is indebted to him upon *bona fide* claims and demands which accrued before he became liable as such stockholder.—PIERCE V. TOPEKA COMMERCIAL SECURITY CO., Kan., 55 Pac. Rep. 853.

26. CRIMINAL EVIDENCE — Murder — Declaration.—Statement of accused as to his reason for killing deceased is admissible; having been made after the preliminary examination, to a justice of the peace, who was not the acting justice of the peace on that occasion, in reply to his question, without any inducement being held out.—HITE V. COMMONWEALTH, Va., 31 S. E. Rep. 895.

27. CRIMINAL LAW—Bigamy—Indictment.—Under the first clause of section 2603, Rev. St., prescribing a penalty against one who, having a former husband or wife living, marries another person in this State, the second marriage constitutes the gist of the offense, and must be laid in the indictment with particulars of time and place; but the first marriage, being matter of inducement, may be averred without particulars of time and place.—CATHRON V. STATE, Fla., 24 South. Rep. 496.

28. CRIMINAL LAW — Murder—Indictment.—In order to hold one guilty of murder in the first degree who is not the actual perpetrator of the crime, he must not only be present when the crime is committed, but he must be aiding, abetting, advising, encouraging, or assisting another to commit it, having himself a premeditated design to effect the death of the person killed, or knowing or believing that such other person intends to kill the deceased.—MCCOY V. STATE, Fla., 24 South. Rep. 485.

29. CRIMINAL PRACTICE — Severance.—Motions for severance are addressed to the discretion of trial courts, and an appellate court will not interfere with ruling denying such motion where there is nothing in the record showing the truth of the matters proposed as grounds therefor.—ROBERSON V. STATE, Fla., 24 South. Rep. 474.

30. DEATH—Presumption.—A person who absents himself from his home, and is unheard of by the those

who, had he been alive, would naturally have heard of him, for seven years, will be presumed to be dead, and treated as such in any litigation in which he is concerned, in the absence of proof to the contrary.—BOGGS' EXR. v. HARPER'S ADMR., W. Va., 31 S. E. Rep. 943.

31. DEATH BY WRONGFUL ACT — Damage—Services of Wife.—The services of a wife in her husband's household in the ordinary work thereof, or in aiding and assisting him in his occupation, is due and belongs to the husband; and her continued services during the life of her husband cannot be a pecuniary benefit to the next of kin, and the deprivation of such services cannot be a pecuniary injury, nor afford ground of recovery of damages under the death act of this State. Whether such services after the death of her husband would be a pecuniary benefit to the next of kin is a question too remote to be considered by the jury as a basis of a verdict of damages under such act.—MAY v. WEST JERSEY & S. R. CO., N. J., 42 Atl. Rep. 163.

32. DEATH BY WRONGFUL ACT—Elements of Damage.—In an action based upon the act entitled "An act to provide for the recovery of damages in cases where the death of a person is caused by wrongful act or neglect," approved March 3, 1848, the plaintiff is entitled to recover nothing but the pecuniary loss sustained by the person for whose benefit, as next of kin, the action is brought.—MAY v. WEST JERSEY & S. R. CO., N. J., 42 Atl. Rep. 165.

33. DESCENT AND DISTRIBUTION—Bastards—Recognition.—Under Code 1873, § 2466, entitling illegitimates to inherit from the father where he has openly and notoriously recognized them as his children, it is immaterial that such recognition was in a State which did permit bastards to inherit from the father.—VAN HORN v. VAN HORN, Iowa, 77 N. W. Rep. 846.

34. EASEMENTS — Right of Way — Appurtenances.—A barn on one lot could be approached only by a way over an adjoining lot of the same owner, who in negotiating a sale of the first lot took the purchaser over the way, pointing it out as the right of way to the barn. It had been so used for 30 years. Held, that the right of way passed as an appurtenant to the grant, though not mentioned in the deed.—MATTES v. FRANKEL, N. Y., 52 N. E. Rep. 585.

35. ELECTIONS — Ballots — Emblems.—On a ballot, above names of the nominees of the State democratic convention, appeared the words "Democratic Party," with the emblem adopted by that convention; and lower down, above the names of the nominees of the county democratic convention, appeared the same words, without any emblem; but opposite the names of such nominees was the word "Democratic." Held, that a ballot, marked with a cross opposite such emblem, should be counted for nominees of the county convention, as well as of the State convention, even if the county convention should have adopted the emblem to be entitled to its use; the ballot on its face being such that it might well be understood that it would be so counted, the voters having been instructed that it would be so counted, and the republican nominees having made no objection till after the election, though knowing of the mistake, if it was one, in time to have had it corrected before the election.—DICKINSON v. FREED, Colo., 55 Pac. Rep. 812.

36. ELECTIONS — Contest — Alteration of Ballots.—As between ballots and a canvass of them, the ballots control only when they have not been tampered with; and the court, on a recount, must be sure that it has before it the identical, unaltered ballots before they become controlling.—ROHDE v. STEINMETZ, Colo., 55 Pac. Rep. 814.

37. EXECUTION—Sufficiency of Levy.—An action may be maintained on a sheriff's bond for damages arising from the wrongful and oppressive manner in which he executed the mandate of a writ of *fieri facias* upon property subject to the levy.—STATE v. FOWLER, Md., 42 Atl. Rep. 201.

38. EVIDENCE — Legislative Journals.—The journals of both houses of the legislature are the only evidence admissible to show that amendments to a bill were adopted by one branch and not concurred in by the other, and that the bill as signed by the governor was not the bill passed.—EX PARTE HOWARD-HARRISON IRON CO., Ala., 24 South. Rep. 516.

39. EXECUTION—Supplementary Proceedings.—Code Proc. (2 Hill's Code), § 1649, disqualifying a wife as a witness against her husband without his consent, does not apply to supplementary proceedings against a wife in aid of execution against the husband, because he is not a party to that proceeding, and she is examined therein against herself.—FRANKENTHAL v. SOLOMONSON, Wash., 55 Pac. Rep. 754.

40. FRAUD—Laches.—To set aside a sale for fraud and conspiracy, suit must be brought within a reasonable time after the discovery of such fraud.—WILLIAMS v. MAXWELL, W. Va., 31 S. E. Rep. 969.

41. FRAUDS, STATUTE OF — Agreements as to Land.—Where J purchases land for $280, taking title to himself, and C let him have $100, which he pays on the purchase money, under agreement that she shall have an interest in the land to the extent of the amount of her money paid for the same, the agreement is one for purchase of an interest in land, which, being in parol, is not enforceable.—ALLEN v. CAYLOR, Ala., 24 South. Rep. 512.

42. FRAUDULENT CONVEYANCES — Assignment of Benefit of Creditors.—A creditor of an insolvent took an assignment in writing of certain stocks and book accounts of the debtor as security for existing and future indebtedness, and a few days later, by a bill of sale, bought his remaining property, and paid for it by a credit on the indebtedness. The value of the assets thus secured was less than the indebtedness. Held, that the conveyances were not fraudulent as to other creditors.—PENN PLATE-GLASS CO. v. JONES, Penn., 42 Atl. Rep. 189.

43. FRAUDULENT CONVEYANCES—Burden of Proof.—Where a suit is brought by a creditor assailing a transfer of property by his debtor as fraudulent and made with intent to hinder, delay and defraud him in the collection of his debt, the proof of fraud rests on the party who alleges it, but circumstances may exist which will shift the burden of proof from the party impeaching the transaction onto the party upholding it.—BUTLER v. THOMPSON, W. Va., 31 S. E. Rep. 960.

44. FRAUDULENT CONVEYANCES—Deed of Trust Creditors.—Where an insolvent debtor conveys all the property owned by him, being the equity of redemption in a certain tract of land in trust to secure future repairs to be made thereon, and it does not appear that such repairs added to or enhanced the value thereof, such conveyance will be held void, under section 2, ch. 74, of the Code, as to the preference thereby secured.—LAWYER v. BARKER, W. Va., 31 S. E. Rep. 964.

45. FRAUDULENT CONVEYANCES—Pleading and Proof.—A mortgagee is not called on to prove consideration where the mortgage is attacked by other creditors only on the ground the mortgagor was insolvent, to the knowledge of the mortgagee, when he made the mortgage.—MEYER-MARX CO. v. MASTERS, Ala., 24 South. Rep. 506.

46. GUARANTORS—Liability.—The contract of a guarantor is collateral and secondary, and when he guaranties the payment of a bond secured by collateral mortgage referred to in the bond he is not liable upon his guaranty until resort has been had to the mortgage, also to the bond, for the collection of the moneys secured, unless the principal be insolvent, rendering further pursuit fruitless.—MIDDLE STATES LOAN, BUILDING & CONSTRUCTION CO. v. ENGLE, W. Va., 31 S. E. Rep. 921.

47. HABEAS CORPUS — Resignation of Governor — Powers.—When the governor of the State resigns, the powers, duties and emoluments of the office devolve, under the constitution, upon the president of the senate, but he does not thereby become the governor of

the State in the constitutional sense. The president of the senate retains his office of senator, and as president of the senate he exercises the powers and performs the duties of the executive department.—STATE v. HELLER, N. J., 42 Atl. Rep. 155.

48. INJUNCTION — Trespass — Electric Railway.—The operation of an electric railway with municipal consent along a public street, conforming to its grade, is not an additional servitude outside the public easement, for which the owner of the fee of the street is entitled to compensation.—BIRMINGHAM TRACTION CO. v. BIRMINGHAM RAILWAY & ELECTRIC CO., Ala., 24 South. Rep. 502.

49. INSURANCE—Contract.—Where application is sent by an applicant or his agent from one State to an insurance company of another, and there accepted, and a policy of insurance is there issued, it is a contract of the State where issued.—GALLOWAY v. STANDARD FIRE INS. CO., W. Va., 31 S. E. Rep. 969.

50. INSURANCE—Ownership of Property.—An insurance company, though liable on its policy, where the insured was not the "sole and unconditional owner" of the property, as stipulated therein, because its agent had knowledge of all the facts before issuing such policy, was not responsible for the failure of such agent to give information of such facts to the agent of another company, through whom he procured additional insurance for the same person, which was invalid by reason of a like stipulation as to ownership in the policy so procured.—BATEMAN v. LUMBERMEN'S INS. CO., Penn., 42 Atl. Rep. 184.

51. INSURANCE—Title of Insured—Contract of Sale.—Plaintiff, who had leased typesetting machines with an option to buy, made a new contract with the manufacturer to purchase them, and gave its notes for a portion of the price. The contract provided that the purchaser should insure the machines, and deliver the policies to the seller, in whom the title was to remain until paid for. An insurance policy on the machines provided that the loss was payable to the purchaser and the seller "as their respective interests may appear," and that the title was vested in the seller. Held, that as the law would hold the secret lien of the vendor fraudulent, possession being in the purchaser, as against the insurer, the title was in the purchaser.—POST PRINTING & PUBLISHING CO. v. INSURANCE CO. OF NORTH AMERICA, Penn., 42 Atl. Rep. 192.

52. INSURANCE POLICY—Construction—Public Policy.—Where a policy provides that it shall be void if the interest of insured be other than unconditional and sole ownership, and his interest is that he has given his bond for a debt secured by a mortgage of the premises, and is the holder of a subsequent mortgage made by the owner, the company is not liable, either to insured or the owner.—ORDWAY v. CHACE, N. J., 42 Atl. Rep. 149.

53. INTOXICATING LIQUORS — Chattel Mortgages.—When the validity of a chattel mortgage upon a stock of drugs and druggists' sundries is challenged upon the ground that it covers a quantity of intoxicating liquor, and was taken by a person who did not have a permit to sell such liquor, to secure a debt due to him, and the description of the mortgaged goods is general and does not specifically mention intoxicating liquor, it is competent for the mortgagee to testify that when he took the mortgage he did not know or understand that such liquor was included in the stock upon which the security was taken.—C. D. SMITH DRUG CO. v. FIRST NAT. BANK OF EMPORIA, Kan., 55 Pac. Rep. 851.

54. JUDGMENT—Effect.—A plaintiff, holding in her possession notes and a mortgage adjudged to her in an action against her husband for divorce, brought an action over a year thereafter to amend the divorce judgment because it did not correctly describe them. A judgment was rendered directing the amendment, and authorizing foreclosure of the mortgage in all respects as if the notes had been made to plaintiff originally. Service of process was made on her husband and the mortgagor. Held, that all parties were bound thereby, whether the divorce judgment was valid or not, and whether the court had jurisdiction to amend the same or not.—MAGNUSON v. CLITHERO, Wis., 77 N. W. Rep. 882.

55. JUDGMENT—Estoppel.—By paying a sum less than the amount of a void judgment to the judgment creditor, with knowledge of its invalidity, for a release thereof, and a release of a levy thereunder, to avoid the expense and trouble of having its invalidity judicially determined, the judgment debtor does not recognize the judgment, so as to estop himself from thereafter bringing proceedings to have it adjudged void.—SMITH v. MORRILL, Colo., 55 Pac. Rep. 825.

56. JUDGMENT—Foreign Judgments—Action.—After a foreign judgment was held insufficient for failure to show service on defendant, it was amended to show that fact by the court rendering it. Notice of the motion to amend was not personally served on the nonresident judgment debtor, but the court certified that due notice of the motion was given. Held, in an action on the judgment as amended, that the statute of the foreign State, making personal service of such notice unnecessary, might be proved without having been pleaded, there having been no opportunity to plead it.—CUNNINGHAM v. SPOKANE HYDRAULIC MIN. CO., Wash., 55 Pac. Rep. 756.

57. JUDGMENT—Lien—Entry by Clerk after Adjournment.—An entry of judgment on the journal, made in the case by the clerk, by procurement of the counsel for the plaintiff, after the adjournment of the term and in vacation, purporting to have been made at a date during the term, will not, as against the rights of a *bona fide* purchaser of such lands during the term, have the effect of creating a lien on the lands of the judgment debtor as of the first day of the term, although a judgment was in fact pronounced during the term.—COE v. EEB, Ohio, 52 N. E. Rep. 640.

58. JUDGMENTS—Modification.—Where, in an action to determine the priority of certain judgments, one of them, which was never appealed from, was modified, a subsequent judgment creditor cannot have such judgment set aside, nor a certificate of sale of property thereunder vacated, on motion; especially where he did not offer to redeem, by payment of the amount for which the judgment was a lien, within the statutory period, and did not move until 15 months after the modified judgment was entered.—BONNEY v. TILLEY, Cal., 55 Pac. Rep. 801.

59. JUDGMENTS—Priority — Tender.—Where a prior judgment creditor was not entitled to a lien on property sold to the whole amount of his judgment, a subsequent judgment creditor must tender the amount for which the prior judgment was a lien before the expiration of the period of redemption, in order to preserve his rights in the property sold.—TILLEY v. BONNEY, Cal., 55 Pac. Rep. 798.

60. JUDGMENT—Purchaser Pendente Lite.—An action by one creditor to subject property to the payment of a judgment, in which it is decreed that the judgment is a lien upon the property, binds one who purchases during the pendency of the action, so far as the rights of the plaintiff are concerned, but the *lis pendens* does not extend to other claims not mentioned in the pleadings or judgment, nor operate to the benefit of other creditors who are not parties to the action.—ST. JOHN v. STRAUSS, Kan., 55 Pac. Rep. 845.

61. JUDGMENT—Set-off—Rights of Assignees.—Under Code Civ. Proc. § 368, providing that assignments of things in action shall be without prejudice to any set-off or other defense existing at the time of, or before notice of, the assignment, an assignment of judgment to the judgment creditor's attorneys, in payment of services, is subject to the judgment debtor's right to set-off against it a judgment against the creditor acquired by him before notice of the assignment to the attorneys.—HASKINS v. JORDAN, Cal., 55 Pac. Rep. 786.

62. JUDGMENT—Vacating.—A mistake in the transmission of a telegram by the judge of the court, for

which the party is in no way responsible, and whereby a party is deprived of a hearing upon the trial of a cause, is sufficient ground for vacating a judgment.—THUM v. PYKE, Idaho, 55 Pac. Rep. 864.

63. JUDGMENT—Validity—Justice of the Peace.—When two justices sit together at the trial of a case, and no objection is made thereto at the time, the validity of the judgment cannot afterwards be questioned on that account.—GRIFFIN v. HAUGHT, W. Va., 31 S. E. Rep. 957.

64. JUDGMENT CREDITOR — Accounting — Action.—Where a debtor assigned a claim to a creditor as security for an unascertained indebtedness, a judgment creditor of such debtor is entitled to enforce an accounting between him and his assignee.—HOPPER v. MORGAN, N. J., 42 Atl. Rep. 171.

65. LANDLORD AND TENANT — Lease by Life Tenant.—All unexpired leases given by a life tenant on town lots used for building purposes alone terminate with the death of such life tenant, and do not continue in force until the end of the current year.—SHUFFLIN v. HOUSE, W. Va., 31 S. E. Rep. 974.

66. LANDLORD AND TENANT — Lease—Tenantable Condition.—Where a lease authorized the tenant to abandon the premises if they became untenantable, and the roof became injured so as to require rebuilding to make the premises tenantable, an instruction that the landlord could not recover rent after the tenant abandoned the premises on their becoming untenantable is not misleading in failing to state that mere want of temporary repairs would not render the building untenantable.—PROSSER v. PRETZEL, Kan., 55 Pac. Rep. 854.

67. LANDLORD AND TENANT—Life Tenancy.—After the expiration of a life tenancy in a town lot by death, and the termination of a lease thereunder, the lessee cannot remove buildings put on such lot during the continuance of such tenancy. Such buildings become a part of the realty, and go to the person entitled to the remainder.—JONES v. SHUFFLIN, W. Va., 31 S. E. Rep. 975.

68. LANDLORD'S LIEN—Distress Warrant.—Section 12, ch. 93, Code 1891, gives a lien for one year's stipulated rent, whether accrued or not, upon the tenant's goods carried on the premises over liens created after the commencement of the tenant's term by deed of trust, mortgage, or otherwise, though no distress warrant has been issued for such rent.—ANDERSON v. HENRY, W. Va., 31 S. E. Rep. 998.

69. LIEN—Agister's Lien.—An innkeeper or keeper of live stock who has a lien on the property does not lose the lien by levying an attachment upon the property.—LAMBERT v. NICKLASS, W. Va., 31 S. E. Rep. 951.

70. LIMITATIONS — Amendments.—A petition alleging negligence in general terms may be amended so as to set forth definitely of what such negligence consisted, although the statutory period of limitation for the bringing of such an action has expired when the amendment is made.—MISSOURI PAC. RY. CO. v. MOFFATT, Kan., 55 Pac. Rep. 837.

71. MARRIED WOMAN — Contract with Husband—Payment for Services.—Under Horner's Rev. St. 1897, § 5115, abolishing all legal disabilities of married women to make contracts, except to convey real estate or enter a contract of suretyship, and section 5130, providing that the earnings of a married woman, "other than labor for her husband or family, shall be her sole and separate property," a contract of a husband to pay his wife for services as clerk in his store is for a consideration, and valid.—ROCHE v. UNION TRUST CO., Ind., 52 N. E. Rep. 612.

72. MARRIED WOMEN — Husband's Liability.—Under Horner's Rev. St. 1897, §§ 5120, 5122, providing that the husband shall not be liable for the contracts of the wife, nor for any debts contracted by her in carrying on her separate business, nor for improvements or repairs made by her order on her separate realty, a complaint against a wife and her husband, who was her agent, for failing to make certain improvements on demised realty as he agreed for her, is bad as to him.—RICHARDSON v. LEAGUE, Ind., 52 N. E. Rep. 618.

73. MASTER AND SERVANT — Assumption of Risk.—A man of ten years' experience on coal boats, and who had worked for defendant three or four months in unloading coal from vessels, will be held to have assumed the risk of any lack of precautionary regulations prescribed by defendant.—PORTANCE v. LEHIGH VAL. COAL CO., Wis., 77 N. W. Rep. 875.

74. MASTER AND SERVANT—Injury—Contributory Negligence.—A street-car conductor is not guilty of contributory negligence as matter of law in collecting fares on the side of the car on which poles supporting the wires stood, where with one exception the poles were a sufficient distance from the car and he had no knowledge of the dangerous position of the pole by which he was injured; the road on the opposite side being so obstructed as to render it unsafe to collect fares from that side.—PIKESVILLE, ETC. R. OF BALTIMORE COUNTY v. STATE, Md., 42 Atl. Rep. 214.

75. MASTER AND SERVANT—Injuries—Apprehension of Danger.—An employee of intelligence and mature years, knowing the manner in which the work in which he is engaged is conducted, and the position and condition of the appliances used, is bound to apprehend the dangers of his employment.—DUGAL v. CITY OF CHIPPEWA FALLS, Wis., 77 N. W. Rep. 878.

76. MASTER AND SERVANT — Negligence — Proximate Cause.—A person may admit moral guilt of a wrong in cases where he is not legally liable; hence an instruction to the effect that, although the defendant admitted his negligence caused the injury, the plaintiff is not entitled to recover, unless the evidence including such admission shows that the defendant was negligent, and that such negligence was the proximate cause of the injury, is not improper, and, when asked, should be given.—SCHWARTZ v. SHULL, W. Va., 31 S. E. Rep. 914.

77. MECHANICS' LIENS—Limitations—Mortgages.—Under Burns' Rev. St. 1894, § 7259 (Acts 1889, p. 258), making a mechanic's lien void if not enforced within a year of its recording, a mechanic's lien foreclosed within the required time as against the owner, without making a mortgagee of the premises a party, is void as to the latter after one year from its filing.—STOERMER v. PEOPLE'S SAV. BANK OF EVANSVILLE, IND., Ind., 52 N. E. Rep. 606.

78. MECHANIC'S LIEN—Performance of Contract.—If a builder has completed his work according to contract in all material, substantial features, his mechanic's lien is not lost merely because there are minor, unsubstantial, unimportant omissions or defects.—WEST VIRGINIA BLDG. CO. v. SAUCER, W. Va., 31 S. E. Rep. 965.

79. MINES—Location—Conditions.—St. 1897, p. 103, § 2, requiring the locator of a mine, in order to hold his claim, to sink a discovery shaft, or make a cut of certain depth, within 90 days after location, is not in conflict with the act of congress which gives the locator one year to do the $100 worth of labor prescribed by congress as a condition of holding the claim.—SISSONS v. SOMMERS, Nev., 55 Pac. Rep. 829.

80. MORTGAGES — Foreclosure — Sale.—The notice of sale at a mortgage foreclosure declared that the sale was to be made subject to an agreement between a prior owner and another, and gave the date of the instrument, and the time and place of record. The purchaser inspected the premises before bidding, and saw that there was a vacant space of eight feet from an adjoining building. Held, that he was bound to complete his purchase, though, under said agreement, the lot was subject to an easement requiring said space to be kept vacant.—KINGSLAND v. FULLER, N. Y., 52 N. E. Rep. 562.

81. MORTGAGE — Reformation — Mistake.—That the holder of a mortgage, which, by mistake, set out an incorrect copy of the note it was given to secure, had possession of the mortgage, and therefore had oppor-

tunity to discover the mistake, does not import such lack of diligence as would bar an action for reformation in three years from its date, instead of within three years from the discovery of the mistake, as provided by Code Civ. Proc. § 338, subd. 4.—TARKE v. BINGHAM, Cal., 55 Pac. Rep. 759.

82. MUNICIPAL CORPORATIONS — Annexation of Territory.—Where a corporation, with notice that a city by its proper authorities had attempted to annex its property, received benefits from the city for more than three years, allowed the city to sell its property for taxes, which one of its officers bought in without calling in question the right of the city to levy such taxes, and made no objection to being counted in the city limits, it is estopped from asserting its immunity from taxation during such time.—DE PAUW PLATE-GLASS CO. v. CITY OF ALEXANDRIA, Ind., 52 N. E. Rep. 608.

83. MUNICIPAL CORPORATION—Claim against City.—A city charter prohibiting the council from considering or allowing the claim against the city after it had once been disallowed in whole or in part, and providing that failure to pass on the claim within 60 days should be deemed a disallowance and for an appeal from a disallowance within 20 days, held that, where the council had not acted on a claim for 60 days, it could not, after the time for appeal had expired, by an express vote of disallowance thereof, give the claimant a right to appeal within 20 days from such express disallowance.—SEEGER v. CITY OF ASHLAND, Wis., 77 N. W. Rep. 880.

84. MUNICIPAL CORPORATION — Defective Sidewalk—Liability of Town.—Incorporated towns are liable for injuries occurring from defective streets and sidewalks.—TOWN OF WILLIAMSPORT v. LISK, Ind., 52 N. E. Rep. 628.

85. MUNICIPAL CORPORATIONS—Delegation of Powers.—A municipal corporation cannot delegate discretion to its attorney to employ an assistant, if he thinks it necessary, and to fix the assistant's compensation.—KNIGHT v. CITY OF EUREKA, Cal., 55 Pac. Rep. 768.

86. MUNICIPAL CORPORATIONS—Discharge of Fireworks—Negligence.—An incorporated town is not liable for personal injuries occasioned by the firing of squibs, rockets, fireworks, and firearms on the streets by a crowd of citizens, although such acts be done with the knowledge and consent of the mayor, council, police, and other officers of such corporation.—BARTLETT v. TOWN OF CLARKSBURG, W. Va., 31 S. E. Rep. 918.

87. NEGLIGENCE—Injury to Trespasser.—A landowner is under no duty to a mere trespasser to keep his premises safe; and the fact that the trespasser is a child does not raise a duty where none otherwise exists. Such a trespasser, injured on such premises, cannot recover of the landowner by reason of the unsafe condition of the premises, unless this negligence be so gross as to amount to a wanton injury.—RITZ v. CITY OF WHEELING, W. Va., 31 S. E. Rep. 993.

88. NEGLIGENCE—Loss of Vessel.—It is a good defense to an action against a master for the negligent destruction of a vessel that his want of care was due to temporary insanity, resulting from exhaustion caused by his efforts to save it.—WILLIAMS v. HAYS, N. Y., 52 N. E. Rep. 589.

89. NUISANCE—Municipal Corporations.—A city is not absolved, as a governmental agency, from liability for a nuisance caused in cleaning streets by dumping unhealthy refuse near plaintiff's house, on the theory that street cleaning is a duty, and a public benefit in which plaintiff shared.—CITY OF NEW ALBANY v. SLIDER, Ind., 52 N. E. Rep. 626.

90. PARTNERSHIP—Actions Between Partners.—Where a partner, having authority so to do, sold his partner's interest to third persons, and fraudulently withheld part of the proceeds, misrepresenting the sum received by him, he cannot defend an action against him by his partner to recover the sum so withheld, on the ground that there are outstanding, unsettled and contingent partnership liabilities.—LONERGAN v. LONERGAN, Kan., 55 Pac. Rep. 851.

91. PARTNERSHIP — Assignment.—An assignee of a partner's individual interest in an insolvent firm cannot successfully attack an alleged partnership assignment, made to secure a just partnership debt, as the latter is a lien on the social assets superior to the claims of the individual partners or their creditors.—KENNEWEG v. SCHILANSKY, W. Va., 31 S. E. Rep. 949.

92. PAYMENT—Rights of Creditor.—Where one assuming to be attorney of a debtor makes payment to the creditor of money in fact furnished by the debtor's wife, the creditor has a right to treat it as the money of the debtor.—SPECIALTY GLASS CO. v. DALEY, Mass., 52 N. E. Rep. 633.

93. PLEADING—Demurrer—Failure to Amend.—Code 1873, § 2654, provides that on the decision of a demurrer, if the unsuccessful party fails to amend or plead over, the same consequences shall ensue as though a verdict had passed against plaintiff, or defendant had made default. Held, that where plaintiff failed to amend his petition, to which a demurrer had been sustained, but appealed to the supreme court, where the judgment was affirmed, such judgment constitutes a final adjudication, which bars another action for the same cause.—GREGORY v. WOODWORTH, Iowa, 77 N. W. Rep. 837.

94. PRINCIPAL AND SURETY — Subrogation — Official Bond.—Sureties on the official bond of a sheriff, upon being compelled to make good the default of their principal, will, by the fact of payment, become equitable assignees, and be subrogated to the position of the State in respect of all its securities, liens and priorities, for the purpose of enforcing reimbursement from their principal.—MYERS v. MILLER, W. Va., 31 S. E. Rep. 976.

95. RAILROAD COMPANY—Injury from Bridge—Contributory Negligence.—A brakeman of experience, and without defect of sight or hearing, struck by a low bridge under which his train was going, and under which he had frequently gone, is guilty of contributory negligence, in not having lowered his head, though a signal to put on brakes had just been given.—HAFFNER'S ADM'R. v. CHESAPEAKE & O. RY. CO., Va., 31 S. E. Rep. 899.

96. RECEIVER—Parties.—A receiver appointed to take possession of property involved in the litigation during the pendency of the suit, who does not stand as the representative of any of the parties, nor file any pleadings in the case, is a mere stakeholder, and is not a necessary or proper party in a proceeding in error brought to review the judgment of the trial court.—GRAND DE TOUR PLOW CO. v. RUDE BROS. MFG. CO., Kan., 55 Pac. Rep. 848.

97. RECEIVERS—Suits in Foreign Jurisdiction.—Comity will not permit a foreign receiver to sue in Iowa, where his claim is without equity, and contravenes the rights of citizens of Iowa.—WYMAN v. EATON, Iowa, 77 N. W. Rep. 865.

98. RELIGIOUS SOCIETIES—Power to Convey.—A deed of property in trust for the benefit of members of a certain church according to the rules and discipline which from time to time may be adopted by the general conference, and to permit duly-appointed preachers to preach in the church to be erected thereon, authorizes a majority of the church members, acting in accordance with the discipline of the church, to sell the property and devote the proceeds toward building a larger church on a different site.—FAIR v. FIRST M. E. CHURCH OF BLOOMINGDALE, N. J., 42 Atl. Rep. 166.

99. RES JUDICATA—Laches—Negligence.—Where one who was a party to a bill by devisees to sell the real estate of decedent failed to set up a claim to a part of the land that had been conveyed to decedent by mistake, instead of to him, to his knowledge, and submitted to the decree of sale, he became estopped.—ANDERSON v. ANDERSON, Md., 42 Atl. Rep. 207.

100. SALES—Action for Non-acceptance—Damages.—In an action for non-acceptance of a steamboat at a

contract price, there having been no well-defined market value, interest could not be allowed on the damages recovered; the case being within the rule that on unliquidated demands interest is recoverable only if the amount might, with approximate certainty, have been ascertained.—GRAY v. CENTRAL R. CO. OF NEW JERSEY, N. Y., 52 N. E. Rep. 555.

101. SALES—Damages for Furnishing Inferior Articles.—Where one who had contracted to furnish material of a certain quality to be used in the construction of a house, furnished an inferior quality, which became known to the owner after the house was finished, the owner had the right to keep the house in its inferior condition, and recover from the contractor the difference between its actual value and its value had the proper material been furnished, since the parties must be deemed to have contracted with reference to the value of the house with the proper materials furnished.—ELWOOD PLANING MILL CO. v. HARTING, Ind., 52 N. E. Rep. 621.

102. SALES—Trespass—License to Cut Standing Trees.—Standing trees may be the subject of a parol sale, so as to give the purchaser a license to go on the land and remove them.—SPACY v. EVANS, Ind., 52 N. E. Rep. 605.

103. SCHOOLS — Discrimination — Compensation of Teacher.—Where a teacher has been employed to teach a colored school by the trustees thereof, under the supervision of the board of education, and she teaches the same the full term of the other primary schools in the same district satisfactorily to the board of education, cannot escape the payment thereof by interposing a plea that it had, by reason of the school being a colored school, limited the term thereof to a shorter period than the white schools in the same district. Such discrimination, being made merely on account of color, cannot be recognized or tolerated, as it is contrary to public policy and the laws of the land.—WILLIAMS v. BOARD OF EDUCATION OF FAIRFAX DISTRICT, W. Va., 31 S. E. Rep. 985.

104. SHERIFFS—Action on Bond.—Where a sheriff had been ordered to pay plaintiff the proceeds of attached property, it is no defense to an action therefor that a claimant of the property had recovered judgment therefor against plaintiff, and that the proceeds of other property claimed by the attachment defendant to have been exempt was paid to claimant in satisfaction of his judgment.—CHANDLER v. RIDDLE, Ala., 24 South. Rep. 498.

105. STATUTES—Construction.—Where the provisions of a statute are apparently in conflict, its general purpose will be considered, and such construction will be given to each provision as will conform to the intention of the legislature and best promote the harmonious operation of the whole.—SCHOOL BOARD OF BOROUGH OF BROOKLYN v. BOARD OF EDUCATION OF CITY OF NEW YORK, N. Y., 52 N. E. Rep. 583.

106. TENANCY IN COMMON—Adverse Possession.—Two brothers held land as tenants in common, and afterwards one moved off, and resided in the neighborhood for over 30 years, making no claim to the land, and knowing that the other was paying taxes, making improvements (including building a dwelling), and collecting rents. Two years after the removal, the brothers and their wives joined in mortgaging the land. At divers times the brother in possession claimed sole ownership, and for one year leased to the son of the other, with the latter's knowledge and assent. Held, that the brother in possession had acquired title by adverse possession.—CASEY v. CASEY, Iowa, 77 N. W. Rep. 844.

107. TRIAL—Scope of Objections—Witnesses.—An objection that testimony is incompetent, irrelevant, immaterial, hearsay, and not the best evidence, is insufficient to raise the objection that the witness was disqualified by Code, § 4604, prohibiting certain persons from testifying to personal transactions with decedents.—BURDICK v. RAYMOND, Iowa, 77 N. W. Rep. 833.

108. TRUST—Resulting Trusts.—Where a widow, with funds belonging to her separate estate, purchased real property in the name of her minor children, with no intention of making a gift or advancement to them, but under a misapprehension as to the effect of such transaction on her legal rights, a trust resulted in her favor.—COOLEY v. COOLEY, Mass., 52 N. E. Rep. 681.

109. TRUST—Resulting Trusts.—Where a father purchased and paid for land, but took the title in the name of his son, without any arrangement or consultation with him, a resulting trust will arise in favor of the father, unless the transaction was intended as an advancement to the son.—CULP v. PRICE, Iowa, 77 N. W. Rep. 848.

110. VENDOR AND PURCHASER — Improvements.—One in possession of land at the time it was sold cannot set up against an action by the purchaser a claim against the vendor for services in making improvements; he having no lien therefor.—HARMAN v. HARMAN, S. Car., 31 S. E. Rep. 881.

111. VENDOR AND PURCHASER—Mistake—Rescission.—Where a lot was bought for speculation, and the contract of purchase is executed, the loss, through a mutual mistake of the parties as to what it contained, of a narrow strip off one side, lessening its value considerably for building purposes, will not entitle the purchaser to a rescission.—ROGERS v. PATTIE, Va., 31 S. E. Rep. 897.

112. VENDOR AND PURCHASER — Retention of Title.—Where the vendor of land retains the legal title until the purchase price has been paid, an action at law on a note given therefor is not a waiver of his right to proceed against the land.—LONGMAID v. COULTER, Cal., 55 Pac. Rep. 791.

113. VENDOR AND PURCHASER — Sale of Land—Rescission.—Sale of land will not be rescinded because of incumbrances; they all having been removed before decree in the suit to rescind, and they not having interfered with an advantageous resale by the purchaser; he not having been entitled to a deed till payment of his last installment, and all depreciation in value of the property having been before the same was due.—GARBER v. SUTTON, Va., 31 S. E. Rep. 894.

114. VENDOR AND PURCHASER — Title—Deeds.—A purchaser who has accepted a deed of general warranty must generally pay the purchase money, and look to the warranty for indemnity against bad title; but if the grantor is insolvent, or the warranty not binding, he will not be compelled to pay, if the title is defective, though he has not yet lost from its defect.—BENNETT v. PIERCE, W. Va., 31 S. E. Rep. 972.

115. WILLS — Agreements to Devise.—An agreement giving a stepson the entire management of his stepmother's estate, she to receive the profits and to make a will appointing him executor, and make his wife sole legatee, to take after the decease of her son, in consideration of the stepson's promise to take care of herself and her imbecile son, who has an expectancy of 11 years, is supported by a sufficient consideration.—HART v. HART, N. J., 42 Atl. Rep. 153.

116. WILLS—Use of Income — Residuum.—A testator devised to his wife the life use of all his property, and provided that she should use but the rents and profits of his estate, or so much thereof as she could make profitable use of, and enjoined on his executors the duty to assist her and attend to all her business. Held, that it was a power to use the income, and, the widow not doing so, the rents and profits remaining with the executors at her death fell into the residuum.—BRUSON v. MARTIN, Ind., 52 N. E. Rep. 599.

117. WILL CONTEST — Trial.—In an action to set aside a will, an order sustaining a demurrer to plaintiff's evidence, and discharging a jury that had been impaneled, is error, where there was evidence tending to sustain plaintiff's allegations, though the parties are not entitled to jury trials in such cases as a matter of right.—LOOB v. FENAUGHTY, Kan., 55 Pac. Rep. 841.